

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME X.

(Pages 3569 to 3936 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Nos. 2209, 2210 AND 2211.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME X.

(Pages 3569 to 3936 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM
DWYER, and FRANK W. KETTENBACH,

Appellees.

Transcript of Record.

VOLUME X.

(Pages 3569 to 3936, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

(Testimony of Frank W. Kettenbach.)

Q. What did that indebtedness consist of?

A. It consisted of money loaned to him. I think it was partly evidenced by notes and partly by an overdraft on the books of the Lewiston National Bank at that time.

Mr. GORDON.—Was that consideration for both deeds, or was it \$2,400.00 in each?

WITNESS.—\$2,400.00 for both deeds. Each deed conveys the same property.

Mr. BABB.—Q. I will ask you to state who negotiated these transfers to the [3173—2843] bank, or on behalf of the bank, do you know?

A. I did.

Q. State whether that was a personal interview, or by correspondence.

A. By correspondence.

Q. If you have that correspondence, please produce it.

A. I have a copy of my letter from my letter-book. I brought a copy of it here.

Q. Well, what letter? From whom, and to whom?

A. This is a copy of my letter to C. W. Robnett, at Vale, Oregon, on September 16th, 1907.

Mr. GORDON.—Is that a letter-press copy that you are reading from?

WITNESS.—No; this is a typewritten copy; but I can produce the letter-press copy if you wish it.

Mr. BABB.—Q. What book was that letter-press in?

A. This is on page 514 of the Lewiston National Bank letter-book, that contained the copies of let-

(Testimony of Frank W. Kettenbach.)

ters at that period.

Q. State what was done with that letter?

A. I received a—

Q. Was it mailed to anybody?

A. How is that?

Q. Was that letter ever mailed to anybody?

A. This letter was signed by me, as President of the Lewiston National Bank, and mailed to C. W. Robnett, at Vale, Oregon, and I received a reply by telegram to that.

Mr. GORDON.—What is the date of the letter, please?

WITNESS.—The date of the letter is September 16th, 1907.

Mr. BABB.—Q. Have you the telegram you received in answer to that letter? [3174—2844]

A. I received a telegram dated Vale, Oregon, September 21st, 1907, signed “C. W. Robnett.”

Q. That is the message as delivered by the telegraph office at this end?

A. Yes—the Western Union Telegraph Company.

Mr. GORDON.—What is the date of that?

WITNESS.—September 21st, 1907.

Mr. BABB.—I offer these in evidence.

Said copy of letter and telegram were thereupon marked by the reporter as Defendants' Exhibits M-2 and N-2.

Mr. BABB.—Q. After the receipt of that telegram did you see Clarence W. Robnett before he delivered his deed and the deed of Elizabeth White to that property?

(Testimony of Frank W. Kettenbach.)

A. Clarence Robnett came to Lewiston from Vale sometime after that, and executed the deed to this property?

Q. Pursuant to the correspondence?

A. Pursuant to his acceptance of my proposition.

Q. I will ask you to state whether, at any time prior to the delivery of those deeds or the recording of them, he advised you or gave you any information to the effect that the property conveyed, or any of it, had been illegally acquired from the Government of the United States?

Mr. GORDON.—Objected to as leading and suggestive.

WITNESS.—He did not.

Mr. BABB.—Q. I will ask you to state whether he ever informed you at any time that either these properties or any other properties that are involved in this case No. 406, in Equity, and the cases in which this evidence is being taken, had been illegally acquired from the Government of the United States by the entrymen? [3175—2845] A. He did not.

Q. I will ask you to state whether he ever made any statements to that effect to you at any time when falling in with you accidentally as when either you or he were coming to the office in the morning, in Lewiston, or going home from business in the evening?

A. He did not.

Q. If he ever made any statements in regard to any of these titles, state what he did say.

A. I don't think he ever said anything about the titles. I don't think any question of title was ever

(Testimony of Frank W. Kettenbach.)

raised. When I bought the property I got an abstract of title and looked at that.

Q. I have reference more particularly to the legality of the original acquisition of these lands from the Government of the United States.

A. I had some talks with Robnett. Sometimes we would drift together going home, and we would get on to the subject of these timber fraud cases, and the indictments, in a general way; but that was not at any time when I was considering the purchase of this particular claim; and at all times when he talked to me everything that he said about those cases went to show that he was absolutely innocent of any fraud, and that the Government was all wrong in its theory of it; that there was no fraud in connection with acquiring these timber lands, by either himself (Robnett) or Kester, or Will Kettenbach, or Dwyer, or anybody. While I don't remember the details of those talks, I can remember distinctly the substance of all of those talks, along the line that he and Will Kettenbach and Kester and Dwyer were absolutely innocent of any wrong doing.

Q. Those conversations referred to the indictments pending in the United States court?

A. They occurred before I had bought into the Lewiston National Bank, before July, 1907. Once in a while when I would meet him, and [3176—2846] during the period that the Government was securing the indictments and prosecuting the boys for these land fraud matters. I naturally had a good deal of sympathy for them, and for Robnett, and when we

(Testimony of Frank W. Kettenbach.)

would drift together going home I would ask him about the cases.

Q. I will ask you to state what, if any knowledge or notice you had at the time of the execution by Kester and Kettenbach to the Idaho Trust Company of the deed of July 6th, 1907, and of the trust agreement reciting the same, dated July 23d, 1907, that there had been any illegality or fraud committed against the Government of the United States in securing from the Government the titles to the lands described in that deed and in that trust instrument?

A. I didn't have any knowledge, and I don't think I had any notice. Of course, whenever the Government was taking any steps in these cases I would see the published reports, and I would learn about those steps as they were made public; but I don't think they referred to this particular land; if they did, not to very much of it.

Q. I will ask you the same question in regard to the conveyance—knowledge or notice of similar circumstances in regard to the land included in the conveyance from Kittle E. Dwyer and her husband to the Idaho Trust Company, dated December 31st, 1908?

A. I will say the same about that. I looked at his abstract and saw where a *lis pendens* had been filed at one time on I think 320 acres—on the land that was already mortgaged to the Lewiston National Bank, and I just simply took a renewal of the mortgage on that; but on the other land I took I had no notice.

Q. That *lis pendens* had been filed, however, after the recording of the mortgage to the Lewiston Na-

(Testimony of Frank W. Kettenbach.)

tional Bank, had it not?

A. Yes, sir; it was filed after the recording of the mortgage, but I think it was filed before I took that trust agreement, which was merely a renewal of the security.

Q. I show you here a paper purporting to contain a list of the [3177—2847] indebtedness of Kittie E. Dwyer and her husband to the Idaho Trust Company and renewals of that indebtedness from time to time, on the same form of instrument as Exhibits W-1, X-1, and Y-1, and ask you to state what that shows?

A. This list shows the notes given by Dwyer and wife to the Idaho Trust Company, secured by this trust agreement, and shows the last two notes unpaid, being the note for \$19,683.50 and the note for \$480.00. This list don't go back as far as that other list, quite.

Q. But it comes down later? A. Yes.

Q. Well, explain that.

A. This list doesn't go back and show the earlier notes given, which are shown on another list that I introduced, but it comes down to date, and shows the notes as they stand now, unpaid.

Q. What is this last list shown you made from?

A. This list is taken from the Loan Register of the Idaho Trust Company.

Mr. BABB.—I offer that list in evidence.

Mr. GORDON.—Objected to on the ground that it is not the best evidence, the records being the best evidence, and not being produced in court.

Said list was thereupon marked by the Reporter as

(Testimony of Frank W. Kettenbach.)

Defendants' Exhibit O-2.

Mr. BABB.—I now offer in evidence a deed dated January 8th, 1910, from the Lewiston National Bank to the Idaho Trust Company, recorded in the Recorder's office of Nez Perce County, Idaho, in Book 103, of Deeds, at page 101.

Said deed was thereupon marked by the Reporter as Defendants' Exhibit P-2.

Mr. BABB.—Q. I will ask you to state whether the indebtedness evidenced by [3178—2848] this note that has been offered in evidence, from W. F. Kettenbach to the Idaho Trust Company, dated February 5th, 1910, for the principal sum of \$9,544.71, was created at the date of the execution of that note, or whether it was a previously existing indebtedness, or any part of it. If so, describe the origins of it.

A. That is a renewal of previously existing indebtedness. It is really a part of that \$18,000.00 loan that he made from the Lewiston National Bank at one time; that is, according to his own memorandum; of course, it is just a renewal of some prior indebtedness. It has always been in the shape of this note, or something else, I think an indebtedness amounting to that much or more to the two institutions.

Mr. GORDON.—May I ask him a question here for information?

Mr. BABB.—Certainly.

Mr. GORDON.—Q. Does the testimony that you have given show the beginning of the indebtedness which exists at the present time of Kester, Kettenbach and Dwyer, or either of them, from the dates

(Testimony of Frank W. Kettenbach.)

you have given down to the present time?

A. Yes, I have done that. In regard to Dwyer it is followed easily; and in regard to Kester I think it is followed just as easily. Dwyer never paid anything that I can remember on his indebtedness. Kester once or twice, in making the renewal settlement, had some money to pay—some moderate amount, which was again made up when I had to advance money to pay taxes and added the interest later on; but it follows down. Now, with Will Kettenbach, he had so many transactions of borrowing and paying that it may be quite difficult to follow down the fact that he always owed not less than about \$9,000.00; but to my best ability in checking up Will Kettenbach from the time he first got this money, up to the present time, he never owed the two institutions at any time less than the amount that he still owes now. [3179—2849]

It was stipulated by and between counsel for the respective parties that the original notes introduced in evidence in behalf of the defendants during the testimony of the witness F. W. Kettenbach, should be withdrawn, and returned to the possession of the owners and holders thereof, and that copies of the same should be furnished for the record, with the same force and effect as though the original instruments were filed with the record.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [3180—2850]

On Friday, the 21st day of October, 1910, at ten o'clock A. M., the hearing was resumed.

FRANK W. KETTENBACH, a witness heretofore called in behalf of the defendants, and duly sworn, resumed the witness-stand for cross-examination, and testified as follows, to wit:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Kettenbach, when did you first become connected in any way with the Lewiston National Bank?

A. I was elected president of the bank and bought some stock about the first of July, 1907. Before that time for ten or eleven years I had no connection, except that I bought ten shares of the Lewiston National Bank stock some months before July 1st, 1907.

Q. You had been in the bank before that, however, as its president, had you not?

A. I went to work in the Lewiston National Bank in 1885 as bookkeeper, and worked through different positions, and finally became president, and resigned and went entirely out of the bank and sold the little stock I had, in I think about January, 1896.

Q. And you are the uncle of William F. Kettenbach, who is one of the defendants in this suit?

A. Yes.

Q. Was Mr. Clarence W. Robnett in the bank when you went there in the first instance, in '85 sometime?

A. Well, while I was cashier or president of that bank, in about [3181—2851] 1892, I employed him, first as janitor and office-boy, and he was still in the employ of the bank when I sold out in 1896.

Q. He was in the capacity of bookkeeper at that time? A. I think he was keeping the books.

(Testimony of Frank W. Kettenbach.)

Q. And you returned to the bank in the capacity as its president July 1st, 1907?

A. Yes, about that date?

Q. But at that time William F. Kettenbach and George H. Kester had been convicted in the District Court of the United States for the District of Idaho, for conspiracy to defraud the United States of its timber lands, had they not?

Mr. BABB.—I object to the question wherein it states that they were convicted of defrauding the Government of timber lands, on the ground that it is untrue, and that there was only some single entry or so involved in those particular indictments—I don't know just what was involved in them.

At the request of Mr. Gordon the Reporter thereupon repeated the last question.

Mr. BABB.—I thought it said "these" in there.

Mr. GORDON.—No.

Mr. BABB.—Well, I think the same objection will apply.

WITNESS.—They had been convicted on some timber fraud charge in Moscow.

Mr. GORDON.—Q. They had been convicted in the May before—several months before?

A. Yes; just about two months before I bought into the bank.

Q. And Robnett had also been convicted of subornation of perjury in the United States Court, and was then under sentence, or had been sentenced in connection with his timber transactions, had he not?

A. Yes. [3182—2852]

(Testimony of Frank W. Kettenbach.)

Q. Now, about the time you came in, I think it was the 8th or 9th of July, Mr. Kester and Mr. William F. Kettenbach and Mr. Robnett resigned from the bank, did they not? A. Yes.

Q. And they were not connected with the bank—Kester and Kettenbach—in any official position after that?

A. No; Kester and Kettenbach were not connected after that.

Q. Now, Mr. Robnett went out of the bank about the first of August, did he not? A. He did.

Q. And he remained out for how long?

A. I think about three months.

Q. Two or three months, wasn't it?

A. Yes, two or three months.

Q. He came back in October, did he not?

A. I think he came back the latter part of October.

Q. Of *you* year 1907? A. 1907, yes.

Q. And remained in the Lewiston National Bank as a bookkeeper from that time until March, 1909?

A. Yes.

Q. Now, Mr. William Dwyer had also been convicted of subornation of perjury in connection with land transactions at that time, had he not?

Mr. BABB.—We object to that on the ground that the records are the best evidence; I don't know that the witness knows—

Mr. GORDON.—Well, I object to counsel suggesting to the witness what he may not know.

Q. I will ask you if you did not know that Mr. Dwyer had been convicted of subornation of perjury

(Testimony of Frank W. Kettenbach.)

when you went into the bank?

A. Yes. I didn't believe he was guilty, though.

[3183—2853]

Q. Sir?

A. I didn't believe he was guilty, though.

Q. Mr. Kettenbach, when you came into the bank in July, 1907, did you find a shortage there of about \$12,000.00?

A. No, sir.

Mr. BABB.—I object to this as not proper cross-examination.

Mr. GORDON.—Q. When did you learn that there was a shortage of \$12,000.00?

Mr. BABB.—The same objection.

WITNESS.—Some time after—

Mr. BABB.—I— Let me see: The question is when he learned that ther was a shortage?

Mr. GORDON.—Yes.

Mr. BABB.—I am willing the witness shall answer up to the time when he acquired any of this property, so far as it has any bearing upon the issues here. Outside of that I instruct him not to answer.

Mr. GORDON.—Of course, you can instruct him as you like, Mr. Babb, but I will ask the question.

Mr. BABB.—I don't think that has anything to do with the issues.

WITNESS.—I am perfectly willing to answer.

Mr. GORDON.—Q. When did you first learn that?

A. Some time after April—after about April 10th, 1909, after I had learned of the large shortages in the bank and the bookkeepers began to work on the books they found that there was a shortage of about that

(Testimony of Frank W. Kettenbach.)

amount when I had bought.

Q. Was any of these notes that were taken of either William F. Kettenbach or George H. Kester, in July, 1907, for any part of that shortage—that \$12,000.00?

A. No, sir; they were not.

Q. In 1907, in July, what percentage of the stock of the Idaho [3184—2854] Trust Company did you own, Mr. Kettenbach?

Mr. BABB.—I object to that as not proper cross-examination. Of the Idaho Trust Company?

Mr. GORDON.—Yes.

Mr. BABB.—I object to that as not proper cross-examination.

WITNESS.—I haven't figured it out. You have a list of the stockholders at that time.

Mr. GORDON.—I wanted it approximately, that was all.

(No answer.)

Q. Was it 20 per cent, or 40 per cent, or how much?

A. Well, let me see: Without looking up the records, I think it was something about 20 per cent, or 25.

Q. And I will ask you what proportion or what percentage of the stock of the Lewiston National Bank did you and the other members of the Kettenbach family own, in July, 1907?

Mr. BABB.—I object to that as not proper cross-examination, and it is irrelevant and immaterial.

WITNESS.—Well, I had just recently bought ten shares myself, and at the time of going into the Lewiston National Bank I bought about \$25,000.00

(Testimony of Frank W. Kettenbach.)

worth of stock from William F. Kettenbach, and paid him 220 per cent for his stock, and I bought ten shares at the same price from George Kester, which was all he owned at that time, and about that time, or very shortly after, I bought I think 40 shares at the same price from Dr. Givens, and then I think that Will Kettenbach and his sister owned about half the stock of the Lewiston National Bank.

Q. That was Mrs. Grace Pfafflin?

A. Mrs. Grace Pfafflin, yes.

Q. Did Mrs. Grace Pfafflin own any stock in the Idaho Trust Company in July? A. Yes.

Mr. BABB.—I object to that as not proper cross-examination. The [3185—2855] witness need not answer that, unless he feels like it.

Mr. GORDON.—I submit that counsel has no right in a proceeding of this kind to instruct the witness not to answer.

Mr. BABB.—Well, I will take my chances on that.

WITNESS.—Yes; she owned some stock in the Idaho Trust Company, a small amount—I forget now—\$10,000.00 or \$15,000.00 worth. Of course, I am testifying from memory here. The records are easily obtainable, if you want to get the exact amount.

Mr. GORDON.—Q. Now, did you say that some time or other the Idaho Trust Company purchased all but 90 shares of the stock of the Lewiston National Bank?

Mr. BABB.—The same objection as last mentioned. There is no such testimony in chief, and it is not proper cross-examination.

(Testimony of Frank W. Kettenbach.)

WITNESS.—The shareholders of the Idaho Trust Company unanimously agreed with the shareholders of the Lewiston National Bank, that the shareholders of the Lewiston National Bank turn all of that stock—

Mr. GORDON.—Q. All of their stock?

A. —all of their stock into the Idaho Trust Company as a gift, or bonus, to the Idaho Trust Company, so far as the Trust Company was concerned, and it was carried into the profits or surplus of the Trust Company; and then the shareholders of the Idaho Trust Company to reimburse the shareholders of the Lewiston National Bank, turned over to them practically half of the Idaho Trust Company stock; and it was handled by a committee of shareholders, to see that the values were correct. The value of the Lewiston National Bank stock was reduced to an even 200 per cent and the value of the Idaho Trust Company stock to an even 100 per cent; so that, when the surplus—when the Lewiston National Bank stock was turned over to the Idaho Trust Company it just doubled that stock in value, and made it worth 200 per cent; so that when the [3186—2856] Lewiston National Bank shareholders got back a like number of shares from the Idaho Trust Company, the whole transaction was closed. Everybody got value received, based upon the figures and the values that were ascertained by the committee of shareholders of both banks, and the difference in value of the stock in each case was set aside as a guaranty fund.

Q. Now, when did they begin this transaction of

(Testimony of Frank W. Kettenbach.)

transferring the stock from one company to the other? I might call it a consolidation—I don't assume that it was an absolute consolidation—but when did that transaction begin?

A. Well, we began discussing it—I don't know whether—almost—I think it was about the same time that I went into the Lewiston National Bank; but it took a long time to get the consent of the shareholders, and pass all the necessary resolutions, and I think it wasn't closed until—I don't know—some time I think in January, 1908; and my recollection isn't even clear as to that date.

Q. And during the time that you were the president of the Idaho Trust Company and the president of the Lewiston National Bank, you were practically the general manager or had general management of both concerns, did you not?

A. Subject to the Board of Directors—of each bank.

Q. Now, the property that is in suit, and which was acquired by the Idaho Trust Company in the manner you have described, were the negotiations for that property conducted by you?

A. Yes, I think I conducted most of the negotiations; that is, I brought about the various directors' meetings and the discussions between the several shareholders, which resulted in action being taken by the Boards of Directors of each institution:

Q. And was the Board of Directors' meeting of the Idaho Trust Company that passed upon the lending to Kester and Kettenbach of the amounts that you

(Testimony of Frank W. Kettenbach.)

have specified here, in July, 1907? [3187—2857]

A. I beg pardon; I didn't hear that.

Mr. BABB.—I think he misunderstood the former question. I think it had better be read to him.

The Reporter thereupon repeated the last question, as follows:

“Q. And was the Board of Directors' meeting of the Idaho Trust Company that passed upon the lending to Kester and Kettenbach of the amounts that you have specified here, in July, 1907?”

Mr. BABB.—The question before that, the one he just answered. I think your minds are diverging.

WITNESS.—Read the question before that, and see if I understood it.

Mr. BABB.—Or I didn't hear it just right, maybe.

The Reporter thereupon repeated said question and answer, as follows:

“Q. Now, the property that is in suit, and which was acquired by the Idaho Trust Company in the manner you have described, were the negotiations for that property conducted by you?”

“A. Yes, I think I conducted most of the negotiations; that is, I brought about the various Directors' meetings and the discussions between the several shareholders, which resulted in action being taken by the Boards of Directors of each institution.”

WITNESS.—I would like to say that in regard to the next to the last question that the property I am talking about there is the stock of the Lewiston National Bank.

(Testimony of Frank W. Kettenbach.)

Mr. GORDON.—Oh. Well, now, I was speaking about the lands that are involved in these various suits.

A. Well, now, if you will make clear and say just what land that is, and put the question again, why I will try and answer it.

Mr. GORDON.—Well, I think the question is clear enough. If you will read it again I think he will understand it.

The Reporter thereupon again repeated said question, as follows: [3188—2858]

“Q. Now, the property that is in suit, and which was acquired by the Idaho Trust Company in the manner you have described, were the negotiations for that property conducted by you?”

WITNESS.—Well, of course,—“the property in suit”—

Mr. GORDON.—Q. I mean in these suits that we are talking about?

A. Well, I will say that when I gave my answer to that question, I thought you meant the bank stock that was acquired by the Idaho Trust Company.

Q. Of course, you can correct that, Mr. Kettenbach. I just want to know about who conducted the negotiations for the various pieces of timber land that are involved in the Equity suit 406, I think it is, about which you have testified?

A. Well, when I bought into the Lewiston National Bank, the bank owned two pieces of land, of about 160 acres each.

(Testimony of Frank W. Kettenbach.)

Q. That was the Lewiston Bank?

A. Yes, that is the Lewiston National Bank, and I don't know anything about the negotiations concerning them. They were held by the bank, and were part of the assets of the bank when I bought in. Then there is another piece of about 160 acres that was bought by the bank from C. W. Robnett, and I conducted those negotiations.

Q. That is the one you referred to yesterday as the Waldman claim?

A. Yes, I think that is the Waldman claim.

Q. Now, as to the rest of the property that you testified to yesterday, who conducted the negotiations by which that property got into the name of the Idaho Trust Company?

A. Oh, the property—the lands that were taken title to by the Idaho Trust Company from George Kester and William F. Kettenbach, in accordance with that trust agreement, the negotiations concerning them were carried on by me. [3189—2859]

Q. You testified as a witness on behalf of the defense at the trial of the case of the United States vs. Kester, Kettenbach and Dwyer, at Moscow, in the spring of 1907, which has been referred to as the conspiracy cases, did you not?

A. Yes, I think I was a witness there.

Q. Mr. Kettenbach, do you remember, in October, 1904, of a circular being circulated around through Lewiston and in this part, signed "CITIZENS COMMITTEE," charging Kester, Kettenbach and

(Testimony of Frank W. Kettenbach.)

Dwyer with being connected with the land fraud cases, etc.?

Mr. BABB.—I object to the question in regard to a document like that, unless the document is shown to the witness.

Mr. GORDON.—Q. Do you remember—

A. Well, I remember a good deal of talk and newspaper comment about that time about such a circular, which circular, I believe, referred to frauds against the State of Idaho—not any of this land—fraud matters that were subsequently brought up by the Government.

Q. You remember seeing such a circular, do you?

A. I don't remember seeing the circular, but I remember all the comment about it, and the newspaper comments, and one thing and another, but I don't remember now of seeing the circular itself. I probably saw it, but I don't remember.

Q. Mr. Kettenbach, do you remember making an affidavit on the 21st of May, 1910, in support of a petition filed by you in the United States District Court for the District of Idaho, for a change of venue, or a change of place of trial of certain indictments in which you were charged with violations of the National Banking laws?

Mr. BABB.—I object to any questions in regard to the affidavit unless it is first shown to the witness.

WITNESS.—I remember signing an affidavit in that matter. [3190—2860]

Mr. GORDON.—Q. And do you remember making this statement in that affidavit, and swearing to it:

(Testimony of Frank W. Kettenbach.)

I read from page 10 of the affidavit: "That all the bias and prejudice which has existed and exists in the said Northern Division of the District of Idaho against the said Kester and William F. Kettenbach and William Dwyer exists against this affiant and defendant, because of the skillful and malicious misrepresentation and publication concerning the land fraud cases in such a manner as to lead the public to believe that this affiant and defendant was connected therewith; that near the time when the first land fraud indictments against William F. Kettenbach and George H. Kester were made public, it was published in the 'Spokesman Review' and in Associated Press dispatches generally that F. W. Kettenbach, a Lewiston bank president, was among those indicted; that similar publication went out broadcast over the United States, and immediately at that time caused affiant and Idaho Trust Company pecuniary loss by reason of the widespread belief created that affiant, the President of said Trust Company, had been indicted; that said reports sent out by the Associated Press were repeated and duplicated in many forms in other and smaller and more local newspapers and were taken up as a subject of conversation and passed from person to person throughout this section of the country." Do you remember making that statement in that affidavit? A. Yes.

Mr. BABB.—The same objection as the last, and on the ground that it is not proper cross-examination.

(Testimony of Frank W. Kettenbach.)

Q. I will ask you, Mr. Kettenbach, if after Mr. Robnett resigned in July, 1907, if the bonding company withdrew from his bond?

Mr. BABB.—The same objection; that is not proper cross-examination. What date was this you are asking him about?

Mr. GORDON.—Just after he went out of the bank—July, 1907.

Mr. BABB.—Before any of these lands were acquired. (To witness:) In October you got the land. [3191—2861]

WITNESS.—I don't think they did right away. I think they did a year afterwards, or some time afterwards they withdrew from the bond.

Mr. GORDON.—Q. And he wasn't under bond from then until his final severance of his connection with the bank?

A. Well, I think the withdrawal was only a short time before his severance from the bank.

Q. I will ask you if it was not because of the conviction of William F. Kettenbach and George H. Kester, in the spring of 1907, in the land fraud cases, that they retired from the bank in July, 1907?

Mr. BABB.—The same objection as the first.

WITNESS.—I think they gave as a reason for their retiring those convictions, and the unsatisfactory condition of the business of the bank, the cause of which they attributed to those convictions.

Mr. GORDON.—Q. The falling off of the deposits?

(Testimony of Frank W. Kettenbach.)

A. The falling off of business as a result of those convictions.

Q. Mr. Kettenbach, you spoke yesterday of a mortgage that was given by William Dwyer to secure \$12,100.00, the first mortgage that was given, and was there any note made of that mortgage in the books of the Lewiston National Bank?

A. The mortgage and abstract of title were in the files of the Lewiston National Bank, and I am sure if any report was made to the Controller during the time the Lewiston National Bank had that, it was reported to the Comptroller as being secured by real estate.

Q. Well, but I mean did the books of the bank show that it was mortgaged—that they held that mortgage?

A. I don't think the books of the bank showed—that is, I can't remember any space now in the books where it would show a mortgage. The register of the notes might have shown the mortgage, but I [3192—2862] think the bookkeepers (Chapman and Robnett) were very careless about writing up that book, and I think in many cases they failed to note in that book whether there was any collateral, or whether there was any mortgage; but the original instruments (the mortgage, abstract of title and notes) were always filed together in the files of the bank.

Q. Now, when the deeds were made in July, 1907, which you have referred to,— A. What deeds?

Q. The deeds to the Idaho Trust Company, or the

(Testimony of Frank W. Kettenbach.)

deed to the Idaho Trust Company, in July, 1907—

A. From Kester and Kettenbach?

Q. From Kester and Kettenbach, in connection with this trust agreement that you have referred to; how much money did Mr. Kettenbach owe at that time, that that deed was given as security for?

A. Well, my recollection is that just at that time he paid up all the indebtedness that he owed the bank, and I don't think that he owed—I don't think now that he owed anything.

Q. To the Lewiston National Bank?

A. Yes, to the Lewiston National Bank or to the Idaho Trust Company.

Q. Well, now, make yourself clear about that. Did he get the money from the Idaho Trust Company to clear his account with the Lewiston National Bank?

A. Why, he owed the Lewiston National Bank some money before that time, but I bought I think about \$25,000.00 or \$27,000.00 worth of the bank stock from him, and I paid him the cash either then or right about that time for that; and besides that he had about a 22 per cent interest in the Kettenbach Company, a grain dealing concern, of which I was manager, and we were liquidating that concern along about that time, and from that time on he got a good deal of money out of that. I don't know just when that was paid, but at different times as we would make [3193—2863] distribution of money from that why he got his money. He probably got \$50,000.00 or \$60,000.00 out of that.

(Testimony of Frank W. Kettenbach.)

Q. Well, what I want to know is, what actual money was advanced or loaned—what the amount of actual money was that was advanced or loaned to William F. Kettenbach, at the time that deed was signed and the trust agreement was signed?

A. I think right at that time there was nothing advanced. That is my recollection.

Q. And that was to secure future advances, was it?

A. Yes, and I think from time to time money was advanced to him shortly after that date.

Q. Well, what do you call shortly after—a month or two?

A. Well, the dates that I gave in the list of notes that I have introduced. I can't remember those dates offhand, but the list of indebtedness that I gave here shows the date when from time to time money was advanced to him by one or the other of those institutions, and that money, of course, was secured by the trust instrument, where it states that it is given to secure any indebtedness that he may owe, or any time thereafter, to either of those institutions.

Q. Now, at the time the deed was made, and the trust agreement, what did George Kester owe either concern?

A. Well, George owed—right at the time of making the agreement he owed the Idaho Trust Company \$51,000.00, and he owed the Lewiston National Bank a good deal of money, I don't know how much, but I loaned him then \$45,000.00 at the time of the

(Testimony of Frank W. Kettenbach.)

execution of the instrument, loaning him \$25,000.00 from the Idaho Trust Company and \$20,000.00 from the Lewiston National Bank, and \$20,000.00 of this that he got from the Idaho Trust Company, of course, was a straight out new loan, and the money was credited—that is, the whole \$45,000.00 was credited to Kester's account in the Lewiston National Bank, and then he paid off all of his prior indebtedness to the Lewiston National Bank, and paid [3194—2864] in some money on some overdrafts, and paid some outside obligations—I don't know what all he paid out of that.

Q. And then—

A. But the amount that that agreement—the amount of indebtedness that he started on that agreement with Kester, was \$45,000.00 exclusive of—

Q. —the \$5,000.00 that you referred to?

A. Yes, sir.

Q. Was that \$5,000.00 in the Idaho Trust Company taken up?

A. That was taken up, too. That was taken up and paid at that time, and the whole indebtedness of George H. Kester individually, and not as guarantor, was \$45,000.00.

Q. Now, \$20,000.00 of that came out of the Idaho Trust Company?

A. Yes, \$20,000.00 of new money; but really \$25,000.00 came out of the Idaho Trust Company.

Q. That was \$20,000.00 you advanced, and the \$5,000.00 that he owed at that time? A. Yes.

(Testimony of Frank W. Kettenbach.)

Q. And the \$20,000.00 came out of the Lewiston National Bank? A. Yes, sir.

Q. Or was credited to him in the Lewiston National Bank, and liquidated some indebtedness and overdrafts he had there. Now, when was the arrangement that you referred to that you had with him made, relative to his securing the overdraft of Naylor & Norlin?

A. Why, he agreed to personally guarantee that overdraft before I bought that stock from Will. Kettenbach.

Q. When did you buy your stock?

A. That was about the first of July.

Q. 1907?

A. Yes. When I bought in the bank—that is, in looking over the assets of the bank and passing on them, I was informed by Will [3195—2865] Kettenbach and George H. Kester both that George Kester was personally responsible for that overdraft, and a short time after I took this trust agreement—that is, I think within a month, after Kester had—or, rather, after the Naylor & Norlin Company had received a large voucher for construction work and paid the money in, this overdraft was paid up, or covered by the execution of a note—by two notes of the Naylor & Norlin Company, endorsed and guaranteed by George Kester.

Q. And that note is in evidence, isn't it? I mean the reference to that note is in evidence—the date?

A. Yes. Those notes, I think, were for quite large amounts. I don't remember.

(Testimony of Frank W. Kettenbach.)

Q. But they were after this trust agreement was signed?

A. They were executed after the trust agreement was signed, but simply taking up or renewing the overdraft.

Q. Of Naylor & Norlin?

A. Of the Naylor & Norlin Company, in accordance with the agreement with Kester and me before I bought the stock. The reason it wasn't done at one, right before I bought in, that is the reason the notes were not given, was because the officer—one of the officers of the company was away on the work and couldn't be reached.

Q. Now, this \$7,100.00 note of Dwyer's and the \$5,800.00 note of Dwyer's, they were assigned back and forth several times between the Lewiston National Bank and the Idaho Trust Company, were they not?

A. I don't remember about their going back and forth, but they were—the \$7,100.00 note and the \$5,800.00 note was assigned to the Idaho Trust Company—turned over to them. My reason for that was, I was trying to get all of the paper that was secured by real estate assigned to the Idaho Trust Company, to be carried by them, and the ordinary commercial paper (unsecured loans) to be carried by the Lewiston National Bank, and whenever I could conveniently make a transfer I would do it. [3196—2866]

Q. At the time that Mr. Dwyer and Mr. William F. Kettenbach and Mr. Kester and Mr. Robnett were

(Testimony of Frank W. Kettenbach.)

first indicted in connection with the land fraud cases, you discussed the matters with them, did you not?

A. Oh, I talked about their affair with them, yes, with Will. Yes, I guess perhaps with all of them.

Q. At that time?

A. Yes. But everything they ever said to me in connection with those cases at all was to the effect that the Government was absolutely wrong in its theory of the prosecution; that there was nothing to it; that they hadn't done a thing that wasn't right, or that would justify the Government in taking the course that they were taking; and I believed them.

Q. Now, at the date of the deed from Dwyer and his wife to the Idaho Trust Company, and the trust agreement that you have referred to in connection with that deed, had the mortgage that you have referred to for \$12,100.00 been made prior to that?

A. Yes.

Q. This note that you have a memorandum of here on Defendants' Exhibit D-2, and No. 16,417, December 7th, 1907, for \$1,000.00, of William F. Kettenbach, that is the first loan or advance that that trust agreement and the deed from Kester and Kettenbach, to the Idaho Trust Company, dated in July, 1907, was given to secure?

A. Yes, I think that is the first.

Q. That was an indebtedness to the Lewiston National Bank? A. Yes.

Q. And the first indebtedness of William F. Kettenbach secured by the said deed and trust agree-

(Testimony of Frank W. Kettenbach.)

ment, is the note date March 9th, 1909, for \$3,000.00, and referred to in Defendants' Exhibit Y-1?

A. Yes, that is what I got from the books. If I were testifying from recollection I would think he owed some money back of there. Can I speak to Mr. Babb just a minute? [3197—2867]

(The witness consulted with Mr. Babb, and then resumed the witness-stand.)

Mr. GORDON.—Q. Do you want to say anything more about that, Mr. Kettenbach?

A. Nothing more than that if I have an opportunity I would like to check that particular question up, because if my recollection serves me right there was some indebtedness there, some note that I haven't got in here; but I will look it up if I have a chance and come back and correct it.

Mr. GORDON.—All right, sir.

The SPECIAL EXAMINER.—Yes, you will have a chance to do that, Mr. Kettenbach, any time before we close. We will be here till Monday now.

Mr. GORDON.—That's all.

Redirect Examination.

(By Mr. BABB.)

Q. Explain in a general way as you remember it what the Citizens' Committee circular was that counsel asked you about.

Mr. GORDON.—There is a copy of it in the record. If he wants it he can refer to it.

Mr. BABB.—Well, it is just his recollection.

WITNESS.—Well, it was an anonymous circular that was distributed in the county shortly before

(Testimony of Frank W. Kettenbach.)

election, sent out for political effect, and in substance it accused Kester and Kettenbach of fraudulently acquiring locations of land, by preventing the State from getting its proper selections, and—

Q. Was that at a general election, or a primary election, or do you remember?

A. Well, I think it was a general election.

Q. Do you remember the repute as to the origin of that circular? Well, I will withdraw that question. In what way were Kester and Kettenbach, [3198—2868] or either of them, involved in that election, so that their actions could be an issue—just briefly, if you remember?

A. I haven't a very clear recollection. George Kester was one of the leaders in the Republican Party in this county, and I think he was running for State Treasurer, or seeking the nomination; and then there was a question of the Treasurer—the election of a Treasurer of the Republican Party, and I think he was friendly to the Lewiston National Bank—that is my recollection—and by defeating the Treasurer it would elect a Democratic Treasurer, who was friendly to the competitor banks of the town, and I think that question was involved.

Q. State, if you remember, the repute of that circular's origin, as to whether it was issued by the authority of the Democratic Committee.

A. The Democratic Committee repudiated it; that is, they said that they were not responsible for it, or didn't sanction it; and as near as I can remember it was anonymous; nobody was willing to take the

(Testimony of Frank W. Kettenbach.)

responsibility of having issued it.

Q. Was or was not the repute of its origin that it came from a faction in the Republican Party?

A. What was that question?

The Reporter repeated the last question.

A. Well, it was reputed or suspected to have come from a faction in the Republican Party.

Q. And was it not also the repute that that faction had tried to get the Democratic Party to espouse the circular, and they refused to do it? A. Yes.

Q. Is it not a fact in a general way that all this public land litigation, both civil and criminal, with which the names of Kester and Kettenbach have been connected, really had its origin in that movement originated by that circular?

Mr. GORDON.—Object to as leading and suggestive, and incompetent+ [3199—2869] and immaterial.

WITNESS.—Yes.

Mr. BABB.—Q. You also learned of the acquittal, or the reversal by the Circuit Court of Appeals of the convictions that counsel asked you about in the criminal cases, did you not? A. Yes.

Q. And also of the final acquittal by the jury, of the defendants in those indictments? A. Yes.

Q. And of the dismissal of all other indictments involved in anything of the kind? A. Yes.

Q. Do you remember just in a general way the subject matter of your testimony at Moscow, in one of these cases that counsel asked you about, to what

(Testimony of Frank W. Kettenbach.)

the interrogatories pertained that were directed to you?

A. I can't remember. It was some minor matter, not in connection with any knowledge of the—

Mr. GORDON.—I think I can help you out on that. I think it was as to the reputation of somebody—a character witness.

Mr. BABB.—That is what I supposed it was. I was hunting for it here.

Mr. GORDON.—Well, I looked for it, and my impression is that that is what it was, as to the reputation of somebody.

Mr. BABB.—Q. It wasn't anything pertaining to any one of the entries, was it, of the land, or was it? I don't know.

A. No, I don't think it was, if I remember. I think you are right about that, about testifying to the character of somebody and I forget what it was.

Q. Some testimony concerning the general reputation of somebody [3200—2870] as to truth and veracity, or something like that?

A. I think that was it.

Q. Do you know whether you gave that testimony in the case that was pending on the charge for subornation of perjury, or on the case for conspiracy, or what? A. No, I don't know which case it was.

Q. And these lands included in the deed that Kester and Kettenbach made to the Idaho Trust Company, do you remember now whether there was any *lis pendens* in regard to any of those at the time you took that deed to the Idaho Trust Company?

(Testimony of Frank W. Kettenbach.)

A. Well, I knew there was a *lis pendens* by the Government, and according to my best recollection now it covered a very few of the claims that were included in that conveyance. I remember that I checked up the amount of land in a rough way to see that there was plenty of land there for security outside of anything that there was any question about by the Government, as shown by that *lis pendens*, and I remember feeling perfectly secure on the security—feeling that the *lis pendens*, if the Government had any claim, or if there was anything wrong about it, that it would be included in that, see?

Q. Had you ever heard of any charge made against any of those entries other than those which are included within the *lis pendens* at that time, and such as you may have heard were involved in those indictments, so far as you heard about those indictments?

A. No, I never heard anything more; and as far as the indictments are concerned, I don't believe I knew what lands they were, or if the names of the entrymen were mentioned at all it must have been in just a casual way, because I don't remember any particular knowledge of any of that stuff.

Q. But outside of anything you may have ever heard, or any entries you may have heard were connected with any of those indictments, or that were named in any *lis pendens*, there was a large amount there that [3201—2871] you had never heard any charge of illegality against included in the deed to the Idaho Trust Company?

(Testimony of Frank W. Kettenbach.)

A. Yes. The *lis pendens* covered about, as I remember, about 57 claims, and they were not all—they didn't all belong to Kester and Kettenbach, and I didn't hear anything or any complaint about anything wrong about any of the other claims.

Q. You were never named as a defendant in any indictment concerning land frauds, were you?

A. No.

Q. And you were never the subject of investigation on the subject of land frauds, so far as you know, by any grand jury, or special inquiry by anybody?

A. Not that I know of.

Q. Counsel called your attention to an affidavit you made on a change of venue, about publications of your own connection with those indictments. I will ask you if it is not a fact that on one occasion the "Spokesman-Review," in giving an account of these criminal cases, published your picture and your name as one of the defendants? A. Yes, it did.

Q. The sources from which this Citizens' Committee circular had its origin were the sources of considerable enmity to you, as well as to George H. Kester and William F. Kettenbach, were they not?

A. Yes.

Q. And until recently—probably six or nine months or a year—the "Spokesman-Review" voiced the sentiments of those sources generally, did it not?

A. Yes.

Recross-examination.

(By Mr. GORDON.)

Q. Mr. Kettenbach, were you friendly with George

(Testimony of Frank W. Kettenbach.)

H. Kester at the time when he was running for State Treasurer? [3202—2872] A. Yes.

Q. And were you helping him as much as you could to be elected?

A. I was friendly to him. I don't think I took a very active part in the work.

Q. You voted for him, did you? A. Yes.

Q. And that was the fall election of 1904, was it not? A. Why, I couldn't remember the date now.

Q. Now, see if you can't count back and figure if that wasn't the fall election of 1904—November, 1904,—if that wasn't the election he was seeking to be Treasurer?

A. Well, I don't remember the date, but very likely it was somewhere about that time.

Q. And this circular—the Citizens' Committee circular—was circulated some months prior to that, during the campaign?

A. It seems to me that it was circulated very shortly—my best recollection is that it was a few days before election. That is my recollection.

Q. Now, the reversal of the judgment of conviction of Kester and Kettenbach that you have referred to wasn't had until May, just a year ago, was it?

Mr. BABB.—Do you mean May, 1909?

Mr. GORDON.—May, 1909, yes.

WITNESS.—Reversal by the Court of Appeals?

Mr. GORDON.—By the Circuit Court of Appeals.

A. Well, I think possibly that's right, but I don't remember the date.

Q. And the acquittal that you referred to of the

(Testimony of Frank W. Kettenbach.)

same charge was in March of this year?

A. Yes, early this year.

Q. Now, the case that you testified in, wasn't that the conspiracy [3203—2873] case of Kester, Kettenbach and Dwyer, at Moscow, in the spring of 1907, at which they were convicted?

A. I don't remember which one of the cases it was at Moscow, but I am inclined to think it was the case that Will Kettenbach and George Kester were involved in.

Q. Well, that is the only one they were tried in—the conspiracy case.

A. Yes? Well, that may be. Maybe it was.

Q. How long ago was it that the "Spokesman-Review" published your picture and associated your name with the land fraud cases?

A. I think it was last year.

Mr. MORGON.—That is all. I just wanted to get the approximate date of that.

WITNESS.—I think it was just a short time before I was indicted at Moscow in the bank matter.

Mr. BABB.—Q. That was published about the time the grand jury was in session there at that time in the bank matter, wasn't it? A. Yes, sir.

Mr. GORDON.—It was in October and November, 1909.

Mr. BABB.—I don't remember the date.

Mr. GORDON.—I just wanted the date, that's all. It was last year. That's all.

Mr. BABB.—Q. Your name had been mentioned by that publication and your picture had been pub-

(Testimony of Frank W. Kettenbach.)

lished before?

A. Yes, my name had been mentioned a number of times.

Q. Before the indictments were found?

A. Before the indictments were found against Will Kettenbach and George Kester. [3204—2874]

Mr. GORDON.—Is that all?

Mr. BABB.—Yes.

WITNESS.—I will check up that Will Kettenbach matter and come back again.

At this time a recess was taken until four o'clock P. M. [3205—2875]

At four o'clock P. M. the hearing was resumed.

[**Testimony of Curtis Thatcher, for Defendants.**]

CURTIS THATCHER, a witness heretofore called and duly sworn, being recalled in behalf of the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. COX.)

Q. State your name, age, residence, and present occupation.

A. Curtis Thatcher; Lewiston, Idaho; merchant; 35.

Q. You are the same Curtis Thatcher who was on the stand heretofore in this case? A. Yes, sir.

Q. What relation is Mrs. Eliza W. Thatcher to you? A. My mother.

Q. You are both defendants in this case?

A. Yes.

Q. How old is your mother at this time, Mr. Thatcher? A. About 73.

(Testimony of Curtis Thatcher.)

Q. Will you state, Mr. Thatcher, the circumstances under which you acquired title to a certain stone and timber claim filed upon by John E. Nelson, and mentioned in the complaint in this case?

A. Why, I loaned Mr. Nelson some money to take up this claim with and took a mortgage on the claim. The mortgage ran along until the statute of limitations had almost expired, and I had him give me a deed for it, in order not to lose the claim entirely.

Q. Did you pay him any consideration at the time that he gave you [3206—2876] a deed?

A. I paid him \$60.00.

Q. That was some four or five years after final proof, was it? A. Yes.

Q. Whose money was it that was loaned?

A. My mother's.

Q. Did you have any agreement or understanding of any kind that Mr. Nelson was to acquire title to this claim for or on your behalf, yourself, or of your mother, or of any of the other defendants in this case? A. None whatever.

Mr. GORDON.—Objected to as leading and suggestive.

Mr. COX.—Q. Before you acquired title to the claim, Mr. Thatcher, do you know whether Mr. Nelson had sought to find a purchaser for the claim?

A. Yes; he told me that he had tried several different parties to get them to buy it.

Q. Was this claim finally deeded to yourself or to your mother?

A. I couldn't say; I think it is to my mother; some

(Testimony of Curtis Thatcher.)

of the claims are deeded to me and some to her.

Q. Has any transfer of the claim been made by yourself and your mother to any other person?

A. Of this Nelson claim?

Q. Yes? A. No.

Q. The title to that claim still stands either in your name or in your mother's name?

A. Yes, sir.

Q. Has any other person except yourself and your mother any right or interest in that claim whatsoever? [3207—2877]

Mr. GORDON.—Objected to as leading and suggestive.

WITNESS.—No, except I heard there was some miners up there filed a mining location or notice on the claim.

Mr. COX.—Q. Did you ever have any conversation with William Dwyer, George H. Kester or William F. Kettenbach, in regard to this Nelson claim?

A. None whatever.

Q. Did you ever have any express or implied agreement, or any agreement, with any of those defendants, whereby they were to acquire any title or interest in this claim? A. No.

Q. State the circumstances, Mr. Thatcher, under which you or your mother acquired an interest in the claim of Soren Hansen, mentioned in the complaint.

A. The only interest acquired in that claim was a mortgage for money loaned.

Q. Has that mortgage been paid? A. Yes.

(Testimony of Curtis Thatcher.)

Q. Have you any interest or claim whatsoever in the Soren Hansen claim? A. Not now.

Q. Or your mother? A. No.

Q. Did you ever have any agreement or understanding of any kind whatsoever that you were to acquire any right or interest in the Soren Hansen claim, for the use or benefit of George H. Kester, William F. Kettenbach or William Dwyer, or any of the other defendants? A. No.

Cross-examination.

(By Mr. GORDON.) [3208—2878]

Q. Mr. Thatcher, the money that you loaned on these claims that you referred to, was that your mother's money? A. Yes.

Q. And how much did you loan on the Nelson claim? A. \$500.00.

Q. And you took a mortgage for how much?

A. \$500.00, I think.

Q. Didn't you take a mortgage for \$750.00?

A. Well, if I did then I loaned him more. Some of the claims borrowed enough to pay the locating with, and some didn't.

Q. Didn't you get \$200.00 bonus for loaning the money?

Mr. COX.—We object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

WITNESS.—On some claims I had a fee of \$100.00 and some of them \$200.00, for placing the money.

Q. And that was in addition to the interest charge?

(Testimony of Curtis Thatcher.)

A. Yes.

Mr. COX.—The same objection.

Q. And how much—what was the per cent or the rate of interest —12 per cent?

Mr. COX.—The same objection.

WITNESS.—One per cent a month.

Mr. GORDON.—Q. One per cent a month?

A. Yes.

Q. Now, did you transact or negotiate the loan with John E. Nelson yourself?

A. I think Robnett brought Mr. Nelson to me.

Q. Well, did he bring him to you, or did he come himself and get the money for it? [3209—2879]

A. He came himself and got the money.

Q. Robnett? A. Yes.

Q. And he told you that Mr. Nelson was going to take up a timber claim; is that correct? A. Yes.

Q. And you were to lend him enough money for that purpose? A. Yes.

Q. Did you know at that time that it was the general understanding that persons in taking up timber claims could not borrow money for that purpose?

A. I did not.

Q. You never heard of it?

A. No, sir; when he took up the claim I never heard of it.

Q. And I will ask you, Mr. Thatcher, if you were to be secured by mortgage on the property, wasn't it a little unusual to charge \$200.00 commission for lending \$400.00 at 12 per cent interest?

Mr. COX.—Objected to as incompetent, irrelevant

(Testimony of Curtis Thatcher.)

and immaterial, and not proper cross-examination.

WITNESS.—I think not, on account of the nature of the risk that the money was loaned on.

Mr. GORDON.—Q. You used the expression that the statute of limitations was about to run against you? A. Yes.

Q. What do you mean by that?

A. Well, as I understand it, unless your mortgage is settled one way or the other within five years, you have no more title or any interest in the claim.

Q. The mortgage was recorded, was it not?

A. Yes. [3210—2880]

Q. Did Nelson convey directly to you, or did he convey to Robnett?

A. He conveyed directly to me or my mother, by deed.

Q. And you say he told you he had tried to sell it to someone else? A. Nelson—yes.

Q. Who did he tell you he had tried to sell it to?

A. What is this man's name—Roubadeaux—Mason is one particular person I remember especially.

Q. And you say you gave him \$60.00 in settlement?

A. Yes. I told him I would give him what it would cost me to foreclose for a deed.

Q. And then the claim cost you how much—about \$500.00?

A. \$560.00. I would take \$200.00 for it now.

Q. What is the matter? Is it burned up?

A. No—there wasn't a thing on it. (Laughing.)

Q. And did you negotiate the loan with Hansen

(Testimony of Curtis Thatcher.)

through Robnett?

A. The Hansen claim I didn't have a thing to do with. Oh! the loan? Yes, sure—yes.

Q. And who paid that mortgage?

A. Well, I think Mr. Kettenbach paid it.

Q. William F. Kettenbach? A. Yes.

Q. And did you get a \$200.00 bonus on that claim?

Mr. COX.—I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

WITNESS.—If it was a \$700.00 loan I did— Not bonus, no.

Q. You didn't loan him \$700.00. How much did you loan him—\$500.00?

A. Well, then, I only got \$100.00 fee.

Q. You only got \$100.00 in that case? [3211—2881] A. Yes.

Q. Did Robnett get \$100.00, too?

A. No. The man wouldn't have had any money to prove up with if he had given it out like that. It took \$400.00 to prove up on his claim.

Q. Did you ever discuss this claim with Robnett?

A. The Hansen claim?

Q. The Hansen and the Nelson claim?

A. How do you mean—before the money was loaned?

Q. Yes. A. Yes.

Q. And that was before either one of them made an entry, wasn't it?

A. Well, I don't know as to that.

Q. Don't you know when it was?

(Testimony of Curtis Thatcher.)

A. I know that he would come and get the money, and then in a little while he would bring back a mortgage; so I couldn't tell whether it was before or after the entry was made.

Redirect Examination.

(By Mr. COX.)

Q. You said, Mr. Thatcher, that this was your mother's money that you were loaning? A. Yes.

Q. Did you make these investments for her?

A. Yes.

Q. You acted as her agent in the making of these loans? A. Yes.

Q. Did Robnett say anything to you as to the kind and value of the security that would be offered for the loans that you made on behalf of your mother? [3212—2882]

A. He always assured me that it was ample security. He didn't give me the security in dollars and cents. Sometimes he gave me the estimated number of feet on the claim.

Q. Was it your understanding that the loans were made before or after entry?

Mr. GORDON.—Objected to as leading and suggestive.

WITNESS.—After entry.

Mr. COX.—Q. At the time when the mortgages were made, were the final receipts delivered to you?

A. Yes.

Recross-examination.

(By Mr. GORDON.)

Q. You say that at the time the mortgages were

(Testimony of Curtis Thatcher.)

made the final receipts were handed to you?

A. Well, whatever that receipt is. What is it they give them for the money?

Q. That is the final receipt—receiver's receipt.

A. Yes. The mortgages and final receipts were handed to me at the same time.

Q. They were handed to you, though, after the money had been advanced? A. Oh, yes. Yes.

Q. And you knew that you were lending money on timber claims? A. Oh, yes.

Q. And were you told by Robnett that the entries had been made when you talked with him about lending this money? A. No, I wasn't.

Q. Now, as a matter of fact didn't Robnett come to you and tell you that he had—he or some of his employees had cruised out a lot of [3213—2883] land, and he was going to put people on it, and he wanted to get the money from you to put up for them to make their entries?

A. No; we never had a conversation of that sort.

Q. Didn't he make arrangements with you by which he could get money when he saw fit, to loan on timber claims? A. Yes.

Q. And that was before you ever advanced any of this money, wasn't it? A. Yes.

Q. Did you have charge of the money of your mother? A. Yes, sir.

Q. In other words, she puts it out, at your suggestion? A. Uh huh.

Mr. GORDON.—That's all.

Mr. COX.—Q. Your mother, Mrs. Eliza W.

(Testimony of Curtis Thatcher.)

Thatcher, is the same person referred to in the bill in this case as Elizabeth W. Thatcher? A. Yes.

An adjournment was thereupon taken until tomorrow morning at ten o'clock. [3214—2884]

On Saturday, the 22d day of October, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of F. J. Davies, for Defendants.]

F. J. DAVIES, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. BABB.)

Q. State your name, age, residence and occupation.

A. My name is F. J. Davies; age, 46; residence, Spokane; occupation, Manager of the Edward Rutledge Timber Company.

Q. Did you at one time make purchases of land, or close purchases of land, rather, for the Clearwater Timber Company, a defendant in this cause?

A. I closed the purchases; I never made any.

Q. I show you the following documents: A draft of F. J. Davies on the Clearwater Timber Company, Limited, dated July 11th, 1907, for \$2300.00, to the order of the Old National Bank, of Spokane Washington and a letter of yours to W. H. Farnum, St. Paul, Minnesota, of the same date; a draft of the same party on same party, dated June 19th, 1907, for \$8,650.00 on the Old National Bank, of Spokane, Washington and the two letters from same party to W. H. Farnum, dated the 19th and 20th of June, 1907, respectively; a draft of same party on same

(Testimony of F. J. Davies.)

party, dated December 20th, 1905, for \$4,900.00, with letter attached, from same party to W. H. Farnum, dated December 20th, 1905; a draft of same party on same party, dated September 12th, 1907, for the sum of \$21,500.00, to the order of the Spokane & Eastern Trust Company, with letter attached, [3215—2885] from same party to W. H. Farnum, St. Paul, dated September 12th, 1907; and I will ask you to state what those documents are, whether they are original, and when if ever they were executed, and in connection with what?

A. Well, the drafts are, or were drawn by me to take up drafts corresponding in amounts made on me by E. N. Brown, in payment of lands purchased by him, and the letters are my letters, advising Mr. Farnum, of St. Paul, that the drafts had been made, and giving descriptions of the lands that they were in payment for, with the purchase price of each tract as purchased.

Mr. GORDON.—They are the original letters. as I understand it?

WITNESS.—Yes, those are my letters.

Mr. BABB.—Q. State what you did with these letters, on writing them and signing them?

A. I sent them to W. H. Farnum, St. Paul, Minnesota, by United States mail.

Q. And when did you first see them after having sent them? A. This morning.

Q. Under what circumstances, and how did you come to see them this morning?

A. Why, you showed them to me about fifteen minutes ago.

(Testimony of F. J. Davies.)

Q. These drafts attached to these letters, what did you do with them after signing them?

A. I turned them in at the banks, to whose order they are drawn, in Spokane. I think most of them are Old National—all but one Old National Bank, and one Spokane & Eastern Trust Company.

Q. And what, if anything, did you receive from those banks on delivery to those banks respectively of these drafts?

A. The deeds and abstracts conveying—the deeds conveying these [3216—2886] lands to the Clearwater Timber Company, with the abstracts of title.

Q. What lands? The lands described in the letters attached to those drafts, respectively?

A. Yes, sir.

Q. In what capacity were those banks holding those deeds and abstracts at that time?

A. Why, the deeds and abstracts were sent them by some bank here, or perhaps other places, accompanied by Brown's draft on me for the purchase price. The bank there held the papers, allowing me the examination of the abstract, and until I made this draft on the Clearwater Timber Company, when they released the papers and deeds to me. I suppose they were in the capacity of trustees for the grantors. I don't know just how you would express it.

Q. Who, if anyone, examined the abstracts of title that accompanied these deeds? I mean on behalf of the Clearwater Timber Company?

A. Well, I did.

(Testimony of F. J. Davies.)

Q. Did you make this examination before giving the drafts in payment of the purchase price?

A. Yes, sir.

Mr. BABB.—I offer in evidence the drafts that the witness has referred to, and the letters annexed to the same.

Said drafts and letters were thereupon marked by the Reporter as Defendants' Exhibits Q-2a, Q-2b, R-2a, R-2b, S-2a, S-2b, and T-2a, T-2b.

Mr. GORDON.—Q. Each letter is attached to the draft—the letter describing the property which the draft is in payment of? A. Yes.

Mr. BABB.—Q. Do you know where the President of the Clearwater Timber Company resided during those times that you were making those purchases [3217—2887] referred to in those letters accompanying the drafts?

A. Why, I am not sure that I know who was President. I understood Mr. John A. Humbird was President. If that's right, he resided in St. Paul. I think he was.

Q. He is the President now and has been for some time? A. So I understand.

Q. You don't know of any other President of the company since its organization? A. No.

Q. What, if anything, did he have to do with the purchase?

A. Absolutely nothing, unless it was to furnish the money for it—his company. He never took any—

Q. Did you ever see him during the time you were making these purchases?

(Testimony of F. J. Davies.)

A. Not in connection with the purchases.

Q. In what way, if at all, did you see him from time to time?

A. He was out in this western country perhaps once or twice a year, and I might meet him socially—run across him somewhere. He never came to my office, nor did he ever notify me when he was coming out.

Q. You never met him, then, in a business way?

A. No.

Q. In connection with the company's business?

A. Never.

Q. If you met him, it was merely incidentally?

A. Yes.

Q. What was W. H. Farnum's connection with the company—the man named in these drafts, or in these letters?

A. Mr. Farnum was Assistant Secretary of the Clearwater Timber Company. [3218—2888]

Q. Where did he reside?

A. St. Paul.

Q. Was he ever out here when you were making purchases for the Clearwater Timber Company?

A. I never saw him.

Q. What, if any, communications did you ever make to Mr. Farnum concerning these properties, other than what is in these letters advising him of those drafts?

A. The only other communication I ever made to him was monthly I prepared a statement of lands purchased during the month, giving the description,

(Testimony of F. J. Davies.)

from whom purchased, date of deed, the estimate of the timber, the purchase price and I think that's all.

Q. An estimate of the amount of timber you mean?

A. Yes, the amount of timber on each tract, these estimates having been furnished me by Mr. Brown—E. N. Brown, formerly of Moscow, and later of Lewiston.

Q. Those banks in Spokane in whose favor you drew these drafts, surrendered to you the deeds of these vendors when you delivered those drafts; is that right? A. They did, yes, sir.

Q. And that was after you had examined the title?

A. Yes, sir.

Q. And that closed the purchase? A. Yes.

Q. Were you ever notified by any of those banks, or by anybody else, that any of those drafts you drew in payment for those deeds and delivered to those banks were not paid? A. No, sir.

Q. Nobody ever called on you for payment?

A. No, sir. [3219—2889]

Q. Or for the payment of the purchase price mentioned in those deeds? A. They have not.

Q. You never had an office either in Latah County or Nez Perce County? A. No, sir.

Q. Or in Shoshone County? A. No.

Q. You did this business at Spokane, Washington?

A. Yes, sir, at Spokane, Washington.

Q. And after you delivered those drafts and received the deeds, what did you do with the deeds and the abstracts of title?

A. I sent the deeds to the county in which the land

(Testimony of F. J. Davies.)

was situated, for record. After the deed was recorded and returned to me I sent it with the abstract covering the tract to W. H. Farnum, at St. Paul.

Q. I hand you five deeds, marked Defendants' Exhibits "P," "Q," "T," "V" and "X," for Identification, and I will ask you to state whether those are the deeds referred to in those letters accompanying the drafts which you identified,

A. I guess I will have to check them over, won't I?
Mr. BABB.—Yes.

(The witness checked said letters with said deeds.)

WITNESS.—Yes, sir, they are the deeds referred to.

Mr. BABB.—I offer these deeds in evidence—the deeds marked Defendants' Exhibits "P," "Q," "T," "V" and "X" for Identification.

Q. I show you, or I hand you, Mr. Davies, four drafts, which are marked Defendants' Exhibits "R," "S," "U" and "W," for Identification. and ask you to state whether those are drafts drawn by Mr. Brown in connection with the purchases evidenced by the deeds which I have just offered in evidence?

(The witness examined said drafts and compared them with the other [3220—2890] drafts offered in evidence.)

WITNESS.—They are.

Mr. BABB.—I offer these last-mentioned drafts in evidence.

Q. I will ask you to state whether during the time these purchases were being made, the Secretary of the

(Testimony of F. J. Davies.)

Clearwater Timber Company resided in Idaho or at Spokane? A. No, he did not.

Q. Did you come in contact with the Secretary in any of these purchases, either personally or by correspondence? A. Never.

Q. Was there anybody in Idaho or at Spokane representing the Clearwater Timber Company other than yourself and Mr. Brown, ever in Idaho during the time of these purchases?

A. No, not to my knowledge.

Q. I will ask you to state what, if any, knowledge or notice or information of any nature you had, if any, up to the time you closed these purchases, respectively, that there had been any charge or claim that any of those titles had been acquired from the United States Government originally by any illegal means, or fraud or misrepresentation, or otherwise?

A. I had no knowledge or information at all which would suggest that—that would suggest that the titles were not properly and legally acquired.

Q. Did you have any notice of such a claim being made in regard to any of those titles? A. No, sir.

Cross-examination.

(By Mr. GORDON.)

Q. Did Mr. Brown, at the time he made the drafts upon you for the property that he purchased, and which the drafts which you have introduced [3221—2891] are reimbursements to you for the same, write any letter to you relative to the claims purchased?

A. Usually a short note, stating that he had drawn

(Testimony of F. J. Davies.)

on me for whatever sum of money was required for the purchase of a certain tract of land, giving me the description. His letter was very similar to the letters I wrote Mr. Farnum.

Q. And did he give the estimate of the amount of timber on the claim?

A. Not usually at that time, but in the course of time he would send me estimates.

Q. Then the purchasing of timber was left exclusively to him—his judgment of the timber?

A. Yes, sir.

Q. And he was the only person in Idaho that was purchasing timber for the Clearwater Timber Company at that time? A. Yes, sir.

Q. At the time you made those purchases, Mr. Davies, what was the price of timber per thousand stumpage?

A. I don't know that I can answer that satisfactorily, but I will say this: that the price of timber has always depended on conditions. The quantity, quality and accessibility determines the value per thousand of timber on any piece of land, in any country. So that there can be no fixed price of stumpage throughout the locality.

Q. But there is usually a minimum price, though, and there was at that time, was there not?

Mr. BABB.—I object, on the ground that it is not proper cross-examination, the witness stating that he didn't fix prices or purchases, and I didn't ask him anything in regard to that.

Mr. GORDON.—Answer the question.

(Testimony of F. J. Davies.)

A. I know of no minimum. If a claim wasn't sufficiently valuable [3222—2892] because of its accessibility, or something of that kind, it wasn't worth having.

Q. Then you were merely the banker for Mr. Brown in these transactions?

A. You might express it that way, I suppose. Really, I was—the deals were handled through me in that way in order that I might examine the abstracts. Otherwise, Mr. Brown probably would have made the draft direct on Mr. Farnum, or the Clearwater Timber Company, as I did.

Q. And you paid the actual amount for each claim as is indicated by the consideration in the deed?

A. Yes, sir.

Q. Well, of course, there were some of them had two or three pieces together; but the aggregate was the exact amount that you paid for those claims?

A. I think in all cases the deed shows the exact amount of the purchase price. (Examining deeds.) Yes, that is correct.

Q. You knew nothing about from whom these claims were purchased by Mr. Brown?

A. Nothing only just what the records would show.

Q. And you haven't with you the estimates that Mr. Brown furnished you, upon which he purchased?

A. No; I haven't them in my possession at all.

Q. You forwarded them to the office?

A. Yes, sir.

(Testimony of F. J. Davies.)

Redirect Examination.

(By Mr. BABB.)

Q. I direct the witness's attention to the deed from Gerry Van Artsdalen, which is offered in evidence, and ask whether the consideration in that deed was the price that was paid? (Exhibiting deed to the witness.) [3223—2893]

A. No—that is \$2,000.00 there. I wish to correct that. The purchase price of the Van Artsdalen tract was \$2,000.00.

Mr. GORDON.—And what is the consideration in the deed?

A. \$800.00. I thought I had looked them all over.

Mr. BABB.—Well, I guess that's all.

Recross-examination.

(By Mr. GORDON.)

Q. I will ask this question, Mr. Davies: Was there anything peculiar about that Van Artsdalen transaction that the deed should name a consideration of \$800.00 and he should be paid \$2,000.00 for it?

A. I know of no reason, and when I answered the question in the first place I hesitated a little, because I thought all deeds taken show the true consideration paid. I run through them, and I thought I saw them all, but I didn't see that.

A recess was thereupon taken until 11:45 o'clock A. M. [3224—2894]

At 11.45 o'clock A. M. the hearing was resumed.

Announcement was made that the defendants rested their case.

[**Testimony of James A. Parker, for Complainant
(in Rebuttal).**]

JAMES A. PARKER, a witness called in behalf of the complainant, in rebuttal, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your full name, Mr. Parker?

A. James A. Parker.

Q And where do you reside, Mr. Parker?

A. At Orofino.

Q. That is in Idaho? A. That is in Idaho.

Q. And how long have you resided at Orofino?

A. Eleven years.

Q. And what is your occupation?

A. Postmaster.

Q. And how long have you been postmaster?

A. It will be ten years next March.

Q. Do you know Mr. M. L. Goldsmith?

A. Yes, sir. [3225—2895]

Q. How long have you known him?

A. Thirteen years.

Q. And do you remember the time that he was State Land Selector in the spring of 1904?

A. Well, I knew him when he was State Land Selector, but I couldn't give the date.

Q. And do you know Mr. Charles Jansen?

A. Yes, sir, I know him.

Q. And Mr. S. P. Fitzgerald?

A. Yes, I know him.

Q. And Mr. Wallace Felter?

(Testimony of James A. Parker.)

A. No, I didn't know him.

Q. Did you know Mr. O. V. Niles? A. No.

Q. I will ask you, Mr. Parker, if Mr. Goldsmith ever came to you and inquired of you as to the qualifications of Charles Jansen, S. P. Fitzgerald, Wallace Felter, or O. V. Niles, as timber cruisers, or inquired of you as to the integrity of these gentlemen?

A. I have no recollection of any such conversation—of such an inquiry.

Q. I will ask you if you ever told Mr. Goldsmith not to employ the gentlemen I have named, as Assistant State Land Selectors, and to cut the entire outfit out; that they were all making their brags that the State could get nothing there; that they had corralled it all?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

WITNESS.—No, I never told him that.

Mr. TANNAHILL.—What page is that on?

Mr. GORDON.—2574.

Q. Did you ever hear any of those gentlemen that I have named ever [3226—2896] make such brags or boasts as that?

Mr. TANNAHILL.—We object to that as immaterial.

WITNESS.—I never did.

Mr. GORDON.—Q. Did you know one Jacob Mortz? A. Yes, I knew of him.

Q. And is he alive or dead?

A. He has been dead something over four years.

(Testimony of James A. Parker.)

Q. Do you remember the year he died?

A. Well, let me see: It was in the summer of 1906. It was before the fire, and the fire was in 1906.

Mr. GORDON.—That's all.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Do you remember of Mr. Goldsmith speaking to you in 1904 concerning some men who had made application to the State Land Board to be appointed State Land Selectors?

A. There is one man I remember distinctly.

Q. One man? A. Yes, sir.

Q. Who did he inquire about?

A. John Snyder.

Q. John Snyder? A. Yes, sir.

Q. And you told him that John Snyder was all right, did you?

A. Yes, I told him I thought he would be all right.

Q. Now, where did that conversation take place?

A. That was in Orofino.

Q. In Orofino? A. Yes, sir. [3227—2397]

Q. Do you remember the time?

A. No, I couldn't tell you the time.

Q. Now, don't you remember that at that time he told you that he had a list of some more men who had made application to the State Land Board?

A. No, I don't remember his telling me that.

Q. He might have told you that?

A. Why, it is possible he may have told me.

Q. And don't you remember of his inquiring of you as to whether or not he could get someone to go

(Testimony of James A. Parker.)

in there and make selections who were honest and would do what was right?

A. No, I have no recollection in regard to that. He inquired as to the reliability of Snyder; I remember that.

Q. Do you remember that you told him to go and see Jake Mortz; that he knew?

A. Why, I have forgotten that if I ever told him that.

Q. He might have told you that?

A. Well (laughing), yes, he might—I don't know but what he might, but I have forgotten it if he did.

Q. Now, do you remember his telling you that S. P. Fitzgerald had applied for a position to the State Land Board? A. No, I don't remember that.

Q. You don't remember that? A. No.

Q. Did he talk to you more than once about it?

A. Only the one time that I remember of.

Mr. TANNAHILL.—That's all. [3228—2898]

**[Testimony of William M. Chandler, for
Complainant (in Rebuttal).]**

WILLIAM M. CHANDLER, a witness called in behalf of the complainant, in rebuttal, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. State your full name, Mr. Chandler.

A. William M. Chandler.

Q. Where do you reside, Mr. Chandler?

A. Orofino, Idaho.

Q. What is your occupation? A. Real estate.

(Testimony of William M. Chandler.)

Q. How long have you resided at Orofino?

A. Thirteen years.

Q. Do you know Mr. M. L. Goldsmith? A. Yes.

Q. How long have you known him?

A. Probably seven years.

Q. I will ask you, Mr. Chandler, if you ever discussed with Mr. M. L. Goldsmith, or if Mr. Goldsmith ever discussed with you, the qualifications or fitness of Charles Jansen, S. P. Fitzgerald, Wallace Felter, or O. V. Niles, or any of them, relative to their qualifications as timber cruisers?

A. Not to my recollection.

Q. Did he ever ask you as to their character or their integrity? A. No.

Q. I will ask you if you ever told Mr. Goldsmith to cut those gentlemen out that I have named; that they were all making their brags that the State could get nothing there; that they had it all corralled?

A. No, I never did.

Q. Referring to the timber land?

A. No. [3229—2899]

Q. You know Mr. Jansen, do you, that I have named? A. Yes.

Q. And Mr. Fitzgerald, that I have named?

A. Yes.

Q. Do you know the other two gentlemen?

A. I know Mr. Felter by sight. I am very slightly acquainted with him. Mr. Niles I don't know.

Q. Did any of those gentlemen ever make any such statement as that, or make any such boasts or brags as I have related? A. Not in my hearing.

(Testimony of William M. Chandler.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. You did hear that they had located a large amount of Government land up there, and posted notices over it, did you not?

A. Oh, I had heard that they had located land; yes.

Q. And that was land that was in controversy between them and the State?

A. I don't know anything about that.

Q. You don't know anything about that?

A. No.

Q. Did Mr. Goldsmith ever talk with you about any land selectors at all?

A. Not that I remember of. It is possible he talked about Snyder; he was one man that I knew, the only local man there; it is possible that he asked about him.

Q. Don't you remember that he inquired of you concerning some state land selectors that had made application to Boise, and you told him to go and see Jake Mortz? A. I don't remember.

Q. You may have done that? [3230—2900]

A. It is possible that I might have done it in regard to Felter. Felter, I think, was well acquainted with Mortz, and it is possible that I did, but I have no recollection of it. I recall now that Mortz and Felter—that is, they were well acquainted. I have heard Mortz speak of him is all.

Q. And if Mr. Goldsmith testifies that he did inquire of you about him, and that you told him to go and see Jacob Mortz; that he would know; more than

(Testimony of William M. Chandler.)

likely his statement is correct, isn't it?

Mr. GORDON.—I object to that as argument.

WITNESS.—Well, it is possible. I don't think, though,—at present I don't recollect—absolutely—but I am not absolutely sure of the proposition.

At this time a recess was taken until two o'clock P. M. [3231—2901]

At two o'clock P. M. the hearing was resumed.

[Testimony of John C. Jansen, for Complainant (in Rebuttal).]

JOHN C. JANSEN, a witness heretofore called and duly sworn, being recalled in behalf of the complainant, in rebuttal, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Jansen, do you know Mr. Gaylor W. Thompson? A. Yes, sir.

Q. Will you state whether or not he was ever at your home or at your house? A. He never was.

Q. Did you know Mr. Norman Jackson in his lifetime? A. I did.

Q. Will you state whether or not you ever had any conversation with him relative to your being employed as an assistant land selector for the State of Idaho? A. Yes, sir, I did.

Q. Well, now, will you state when that was, and the details of any conversation you may have had relative to that subject?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant, immaterial, hearsay, and not the best evidence.

(Testimony of John C. Jansen.)

Mr. GORDON.—You may answer.

A. I met Fitzgerald on the street one day and he informed me that Mr. Jackson was looking for me.

Q. That is Mr. Norman Jackson? [3232—2902]

A. Yes, in the city here.

Q. At Lewiston?

A. Yes; and he also told me that he was stopping at the Raymond Hotel.

Q. That who was stopping at the Raymond Hotel?

A. Mr. Jackson.

Q. Now, when was this conversation?

A. Oh, I think that was about in March some time, in 1904; I think it was somewhere near that time; and I went over and asked the hotel clerk if Mr. Jackson was in, and he cited me to a man that was standing near the door.

Q. Had you known Mr. Jackson then?

A. I had not, up to that time; no. I spoke to Mr. Jackson, and asked him if his name was Jackson, and he says yes, and I introduced myself and told him my name was Jansen, and he told me then that he was looking for me and that he wanted to see me relative to the selecting of the State lands in the section of the country in 38, 5 and 6, and wanted to know if I would be available to go on an expedition of that kind, and I told him that I would. He afterwards wrote me two letters from Boise, stating that he wanted me to be in readiness to go at any time, that he expected to go shortly, but he couldn't tell me just exactly when it would be.

Q. Well, is that all?

(Testimony of John C. Jansen.)

A. Yes, that's all. I never heard any more from him after that.

Q. Did you ever make an application to be appointed State Land Selector, or to assist in the work, to anybody? A. I did not.

Q. Did you ever talk with Mr. Gaylor W. Thompson concerning any timber land transaction?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant, immaterial, [3233—2903] hearsay, and not the best evidence.

Mr. GORDON.—You may answer.

WITNESS.—I never had any business transactions with Thompson in regard to timber lands in my life.

Q. Mr. Jansen, the State made some selections of some timber claims on what is known as Washington Creek, in township 38 north, 6 east, and it has given as a reason for selecting them that it was not as good timber as some other timber in that township, but it was selected to give them an outlet on Washington Creek. I shall ask you to look at the plat of township 38 north, range 6 east, showing Washington Creek, and I will ask you to state whether or not there is abutting on Washington Creek, and adjacent to it, land not selected by the State that has the same access to Washington Creek, and to which Washington Creek affords as good an outlet commercially for lumbering operations?

(Exhibiting plat to witness, who examined the same.)

Mr. TANNAHILL.—We object to it on the

(Testimony of John C. Jansen.)

ground that it is incompetent, irrelevant and immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Well, now, point out the land by legal description that is adjacent to Washington Creek, that has the advantages you have stated.

Mr. TANNAHILL.—The same objection.

WITNESS.—Well, all these pieces that are on the Washington Creek watershed—

Mr. GORDON.—Q. Well, what is the Washington Creek watershed, in what section?

A. In—well, there are a whole lot of them here.

Q. Well, read them.

A. Well, I will start at the top.

Q. Well, now, wait a minute. I don't want that Northern Pacific scrip; I am speaking of what is left.

[3234—2904] A. There is section 15.

Mr. TANNAHILL.—Just point to it, Mr. Jansen, will you?

WITNESS.—Section 15. (Indicating.)

Mr. TANNAHILL.—Well, now, section 5, let's see—Oh, yes. All right.

WITNESS.—Section 17.

Mr. TANNAHILL.—Well, now, the State has got nearly all of section 17. It has got all of 17 that is on the creek. I don't want to interrupt him, but I don't want to go all over this on cross-examination.

WITNESS.—Well, take the north half of section 17, then.

Mr. GORDON.—Q. Do you change that to the north half of section 17?

(Testimony of John C. Jansen.)

A. Yes. The east half of the east half of section 20; the southwest quarter of section 20,—

Q. Be sure you get those descriptions right, now.

A. The northwest quarter of section 29, and the northeast quarter of section 18,—

Mr. TANNAHILL.—Well, the northeast quarter of 18 is several miles from Washington Creek.

WITNESS.—It is on the same watershed.

Mr. TANNAHILL.—Well, the watershed reaches back for ten miles.

WITNESS.—Natural gravity is what they figure on.

Mr. GORDON.—Now, is there a mountain or a ridge in that country that you have been looking at—township 38, range 6?

A. Yes, sir; there is a high range of hills.

Mr. TANNAHILL.—Just wait a minute. We object to that on the ground that it is incompetent, irrelevant and immaterial, and not proper rebuttal testimony. This witness went over this same matter in his case in chief. [3235—2905]

Mr. GORDON.—Answer the question, Mr. Jansen.

A. There is a high range of hills running angling across this township from the southwest corner up towards the northeast corner of this township.

Q. Now, through what sections does it run?

A. It runs through 14, 22, 28, and a part of 32.

Q. Where is 32?

A. And also takes in a part of 29.

Q. And how high is that range of hills, approximately?

(Testimony of John C. Jansen.)

Mr. TANNAHILL.—The same objection.

WITNESS.—I should judge the elevation would be about 1,000 feet.

Q. Above the surrounding country?

A. Yes, from the bed of the creek.

Q. From the bed of— A. —Washington Creek.

Q. And this range of hills lies south of Washington Creek? A. East.

Q. East? A. Yes, sir.

Q. Southeast? A. Directly east. (Indicating.)

Q. I will ask you, from your experience as a timber cruiser, whether or not Washington Creek is what they call a logging creek?

Mr. TANNAHILL.—Objected to as incompetent, irrelevant and immaterial, and the witness has not shown himself competent to answer, and never has shown that he ever ran a sawmill, or ever seen a sawmill as far as that is concerned.

Mr. GORDON.—Answer the question.

WITNESS.—No, sir.

Q. And is the timber in that country what you would call a logging [3236—2906] proposition, or a railroad proposition?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

WITNESS.—It is, strictly speaking, a railroad proposition.

Cross-examination.

(By Mr. TANNAHILL.)

Q. There is water running through Washington Creek, is there not, Mr. Jansen? A. Yes, sir.

(Testimony of John C. Jansen.)

Q. And a great deal of water running in it?

A. In the spring freshets there is.

Q. Well, isn't there considerable water running in it the year round? A. Very little.

Q. Well, there is some, though, isn't there?

A. At the lower end of the stream there is quite a stream, yes.

Q. And during—

Mr. GORDON.—Let him finish, please.

WITNESS.—It runs through the township directly north of this the full length of it.

Mr. TANNAHILL.—Q. And there is water running through the portion of Washington Creek acquired by the State, is there not?

A. A small portion, yes.

Q. Now, have you ever run a sawmill?

A. I have worked in a sawmill, yes, sir.

Q. How much have you ever worked in a sawmill?

A. Perhaps six months.

Q. Where did you work?

A. In New Mexico and Idaho. [3237—2907]

Q. And whereabouts in New Mexico?

A. In Tres Piedras.

Q. And where did you work in Idaho?

A. Up on the Hangman Creek.

Q. Hangman Creek?

A. Yes. It is up beyond the Palouse country.

Q. How large is Hangman Creek compared with Washington Creek? A. About the same size.

Q. And there was a sawmill on Hangman Creek?

A. Yes; but they were not using the water for any

(Testimony of John C. Jansen.)

purpose whatever, outside of the use they wanted to make of it for steam in the boilers.

Q. Well, the banks of Washington Creek are high, are they not?

A. They are at the extreme lower end.

Q. And most any place along Washington Creek it can be dammed and a reservoir created for the storage of logs, can there not?

A. It would take a very expensive dam to dam the upper portion of it.

Q. And you know that it is impossible to run a sawmill without water, don't you?

A. They use water for steaming purposes, yes, sir.

Q. And they use water for creating a storage basin for logs, too, don't they? A. Usually so, yes, sir.

Q. Now, Mr. Jansen as a matter of fact all of this land that you have referred to in your direct evidence, that was covered by homesteads—homestead locations—at the time that the State made its selections, was it not? A. No, sir.

Q. What part of it wasn't covered by the State selections—or wasn't covered by homesteads, at the time the State made its selections— [3238—2908] that is, homestead locations—cabins there—some individual claiming it as a homestead?

A. When I was in there cruising a short time prior to the State selections, there was only half a dozen homesteaders in there that were making any provisions for holding homesteads.

Q. I am not asking you about the provisions; I am asking you about the claims they were making to them?

(Testimony of John C. Jansen.)

A. There were not any homesteads on the major portion of that land. It is a well-known fact, and everybody knew that there wasn't.

Q. When were you in there?

A. I was in there in the winter of 1903 and 1904.

Q. What time in the year 1904 were you in there?

A. I was in there in January and February, and I think some in December, and possibly some in March. I was in there quite a while, I know.

Q. Now, Mr. Jansen, the State selected the west half of section 17, did they not? A. Yes, sir.

Q. And I will ask you if the north half of section 17 wasn't covered by a homestead filing—by a homestead location?

A. Not at that time, no, sir. If there was I don't know anything about it at all. I didn't see any indications of it.

Q. Wasn't T. B. Reed claiming that as a homestead—the northeast quarter of section 17? Wasn't T. B. Reed claiming that as a homestead?

A. Not at that time; no, sir.

Q. You are sure of that, are you?

A. I am positive of it.

Q. Didn't T. B. Reed file on that the 23d of February, 1904, when this homestead line-up was here in front of the land office?

A. Yes, sir, I think he did, if I remember right; but he wasn't making any provisions of homesteading in there when I was in there cruising [3239—2909] at that time, and he hadn't even thought of it.

Q. He had to make an affidavit that he had been

(Testimony of John C. Jansen.)

residing there for sixty days, did he not?

A. I couldn't say as to whether he did or whether he didn't.

Q. Well, don't you know that in order to defeat the State's rights that it was necessary for the entry-man to make that sort of an affidavit?

A. I don't know anything about it.

Q. Are you willing to swear absolutely that you don't know anything about that?

A. Yes, sir, I am.

Q. I will ask you if Carlson—a fellow by the name of Carlson—wasn't located on the northwest quarter of section 17—if he wasn't claiming it as a home-stead? A. Not at that time.

Q. Well, do you know whether he claimed it at any time?

A. I do not; he is a stranger to me.

Q. Don't you know that Carlson filed on the north half of the northwest quarter of section 17, and made an application for the south half of the southwest quarter of section 8, and that was covered by scrip and they had a contest over the scrip, and he tried to defeat the Northern Pacific's right to that scrip, and failed?

A. I don't remember anything about the circumstances.

Q. That might have been the case?

A. The records would show whether he did or not.

Q. I will ask you if there wasn't three cabins right there at the section corner between sections 7 and 8, and 17 and 18—right here—right close to the corner?

(Testimony of John C. Jansen.)

A. Here—right in here? (Indicating.)

Q. Yes, right close in there—in that vicinity?
[3240—2910]

A. No, sir, not when I was there.

Q. As a matter of fact, you never was right in that particular district, was you? A. Indeed I was.

Q. When was you there?

A. In the winter of 1903 and 1904.

Q. And if these people who were holding those homesteads made that affidavit that they were residing there at that time, their affidavits were false, weren't they? A. They certainly were.

Q. Now, Mr. Jansen, you looked after the getting out of the papers of some of these homesteaders who were lined up here in front of the land office on February 24th, 1904, did you not?

A. No, sir, I didn't.

Q. You had nothing to do with getting their papers out, or anything of that kind? A. No, sir.

Q. Did you ever assist anyone in getting out any papers where they had to make an affidavit that they had resided on the land for a specified time, in order to get a filing ahead of the State?

A. No, I didn't; but I want to say right here that I did take a man in and show him this quarter section right in there. (Indicating upon plat.)

Mr. GORDON.—What is it? Describe it.

Mr. TANNAHILL.—Just describe it.

WITNESS.—The north half of the southeast quarter of section 8 and the north half of the southwest quarter of section 9, township 38 north, range

(Testimony of John C. Jansen.)

6 east, Boise meridian. I showed him this quarter section of land, and he came back, and Robnett and him made out his application and filed it; and that is all the homesteader I had to do with whatever. [3241—2911]

Mr. TANNAHILL.—Q. You don't know whether he made an affidavit that he had been residing on it for a specified time or not? A. I do not.

Q. Do you remember the man's name?

A. No, sir, I don't; I don't remember his name.

Q. When was it you took him in and showed him the land?

A. I don't remember that, either. I couldn't give you the date.

Q. Now, I will ask you, Mr. Jansen, if there was any part of section 21 that any homesteader laid any claim to at any time, that you know of, either before or after the State made its filings?

A. No, sir, I couldn't say.

Q. Now, sir, this part of section 8—the east half of section 8—that you testified was subject to entry at the time the State made its filings; I believe you say that Tom Reed might have had—or section 17, I mean—I believe you say that Tom Reed may have had an application in for that, or may have been claiming it as a homestead?

A. Yes, he may have been doing that; but not to my knowledge.

Q. Then that is the only part of section 17 that is anywheres near Washington Creek, except what the State had filed on, is it not?

(Testimony of John C. Jansen.)

A. No, sir; there is quite a territory there—

Q. I mean of section 17?

A. I testified to the entire north half of 17.

Q. Well, the northeast quarter of section 17 is the only part of it that comes anywheres near butting up against the creek; and that doesn't entirely touch the creek, does it?

A. There are small tributaries from the main creek running right through there.

Q. Now, how far is the remaining portion of section 17 from the creek? [3242—2912]

A. It naturally would be half a mile or better.

Q. Now, you don't know whether there was any homestead claimants in section 21, or not, do you, at the time the State made its selections?

A. No, sir, there wasn't.

Q. Are you sure of it? A. I am sure of it.

Q. When did the State make its selections?

A. April 6th, 1904.

Q. April the 6th, or April the 21st?

A. I am under the impression it was April 6th. I couldn't say positively as to the date.

Q. And when was you in there in February, 1904?

A. January, February, and I think a part of March, I wouldn't say definitely, but it was in the dead of winter.

Q. Well, homesteaders could have gone in there and put up cabins in the month of April, could they not, and the latter part of March, when you was out of there?

A. Conditions would have been practically as im-

(Testimony of John C. Jansen.)

possible as they were in midwinter, because the snow had not gone out of there, and the difficulties of getting in and out of there was the same, and it was hard enough for a cruiser to go in there, let alone an inexperienced person who could not snowshoe.

Q. Well, the cruisers usually put up these cabins, did they not?

A. There was a man in there that put up cabins and made that a specialty; his name was Bill Helkenberg.

Q. Dominick Cameron was another that put up cabins, too, did he not, at one time?

A. I don't know of anybody of such a name.

Q. Lawrence was in there also and put up cabins that same winter, was he not? [3243—2913]

A. Lawrence? I don't remember the name. I don't remember any man by that name.

Q. Was there a snowshoe trail to Washington Creek in February, 1904?

A. There certainly was when I was in there.

Q. There was? A. Yes, sir.

Q. And there was a snowshoe trail there in March, too, if you was in there in March, was there not?

A. Yes, sir.

Q. Well, now, tell us whether or not you was in there in March, Jansen.

A. I say I could not positively say as to March, but I think I was there a part of March.

Q. What part of March were you there, if you were in there in March?

A. Well, it must have been the first part of March.

(Testimony of John C. Jansen.)

Q. And when did you leave there?

A. It was quite cold when we were in there. I remember we had a severe time of it.

Q. Now, Mr. Jansen, isn't it practicable to build a dam in section—or about between Sections 16 and 20, and create a storage reservoir for logs?

A. I would not consider that practicable up as high as that; it would be lower down, but in that section of country between 16 and 20 the meadow is quite wide.

Q. How much lower down would you say that it would be practicable?

A. Oh, at least in section 15.

Q. Section 15?

A. The meadow is quite wide all the way through there. [3244—2914]

Q. Well, by creating a storage reservoir on a wide meadow it would give them greater capacity for the storing of logs, would it not?

A. It certainly would; but here's the proposition: In practical logging today, all large companies such as the Potlatch Company up in the Potlatch country, they have better water in the Potlatch country than they have in this country; they are using railroads; they are disregarding the water altogether, outside of a few storage reservoirs where they can load the logs on the cars; but they are very small.

Q. You know the Craig Mountain Lumber Company have built a reservoir, and are utilizing it, on the headwaters of Lapwai Creek?

A. Yes; but they also employ a railroad.

(Testimony of John C. Jansen.)

Q. Well, the railroad is to the storage reservoir, isn't it? And they haul the lumber, or the timber, from the storage reservoir to where their mills are?

A. Yes, sir.

Q. And their plans are to build a railroad farther into the timber and transport the logs from in the timber to the storage reservoir, isn't it?

A. Yes, sir, wherever practicable.

Q. And the same system could be adopted in this section, could it not?

A. Yes, sir, no doubt would be; but the question prior to this time was whether the logs could be driven in that stream the same as they would in an ordinary river as they were back of it. I claim it is not practicable to drive logs on them.

Q. Oh, that is your testimony? A. Yes, sir.

Q. Oh, well, that is not what the stream was taken up for. Now, do you know where Rock Creek is, where Deary's big mill is constructed?

A. I know where there are several mills on the Potlatch, the main [3245—2915] Potlatch Creek—River, rather. I don't know that I have ever been on the Rock Creek proposition.

Q. Have you been where the big mill is?

A. On the Palouse River?

Q. Yes. A. Yes, sir.

Q. On Rock Creek? A. Yes, sir.

Q. The big mill over at Potlatch on Rock Creek?

A. Yes, sir.

Q. You have been there, have you?

A. Yes, sir.

(Testimony of John C. Jansen.)

Q. Now, which is the largest—Rock Creek, where this big mill is situated; or Washington Creek?

A. There is very little difference there as far as the flow of water is concerned.

Q. Well, don't you know that Washington Creek is the largest? A. I couldn't say.

Q. Now, Mr. Jansen, you stated that you had a talk with Norman Jackson concerning your appointment as State Land Selector? A. Yes, sir.

Q. And when you went into the hotel you was looking for Mr. Jackson, wasn't you?

A. Yes, sir.

Q. And you asked the clerk where he was?

A. Yes, sir.

Q. And he pointed him out to you? A. Yes, sir.

Q. And you went up and talked with him?

A. Yes, sir. [3246—2916]

Q. What did you tell him?

A. Why, I asked him if his name was Jackson, and he said "Yes, sir," and I told him my name was Jansen and that I understood he was looking for me, and he said he was, and we got to talking about the State selections that was going to be made, and he asked me if I was going to be available to help do this work. He also told me at that time that I was recommended by several people in the city here. That is about all that was said at that time. Of course, I asked him how soon he expected me to go to work, but he said he couldn't give me any definite answer on it at that time, but he would let me know later on.

(Testimony of John C. Jansen.)

Q. What were you doing at that time?

A. I was cruising most of the time when I wasn't at home. I would come in once in a while and stay maybe two or three days, and maybe a week, and then go back.

Q. What had you been doing prior to that time?

A. I was cruising.

Q. Were you ever connected with the Mining Exchange here in Lewiston?

A. No, sir, I never was, outside of being a member of it.

Q. You was a member of it, was you?

A. Yes, sir.

Q. And did you hold any office in it?

A. No, sir.

Q. You and Fitzgerald had talked over the question of you being appointed as Assistant State Land Selector before you seen Mr. Jackson, had you not?

A. I don't remember that we did.

Q. Well, you say that Fitzgerald said something to you about Jackson wanting to see you?

A. Yes, sir; he said Jackson was in town and wanted to see me. [3247—2917]

Q. Are you sure you and Fitzgerald never talked it over before?

A. I couldn't say positively, but I don't think we did.

Q. You might have talked it over before?

A. Well, we did talk about the State making selections, and wondering whether they would or not, yes, sir.

(Testimony of John C. Jansen.)

Q. And do you remember any specific conversation you had in relation to that?

A. No, not only in a general way.

Q. How many conversations did you have?

A. Oh, probably we would talk it over every day when we were out in the woods, camped together.

Q. Do you know whether the section corner between 16 and 21, and 17 and 20, is on high ground or low ground? A. Yes, sir.

Q. Where is it? Which is it?

A. It is on a sidehill.

Q. How high?

A. Oh, I couldn't say positively as to the height of it.

Q. About how high?

A. Oh, I would say possibly about 200 feet; possibly it might have been less, and it might have been more.

Q. How near the summit—how far from the summit—the top of the hill? A. Quite a ways.

Q. Now, are you judging from your knowledge of where the corner is, or from the distance it is from the creek as shown on the map?

A. Both, because I remember going across that high range of hills on two different occasions along that section line, and I know it is quite a distance from the top down, and also both going the other way, and this section line running north and south there between those sections [3248—2918] is up on the hillside. It is quite a little ways up, too, to a man snowshoeing.

(Testimony of John C. Jansen.)

Q. How far is it from the creek?

A. Oh, it is less than a quarter of a mile.

**[Testimony of Joseph Molloy, for Complainant
(Recalled in Rebuttal).]**

JOSEPH MOLLOY, a witness heretofore called and duly sworn, being recalled by the complainant in rebuttal, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Joseph Molloy? A. Yes, sir.

Q. And you are the same Joseph Molloy who was sworn and testified in this case here some time ago?

A. The same one, yes, sir.

Q. And I will ask you, Mr. Molloy, if you were not a clerk in the United States Land Office at Lewiston, Idaho, in April, 1904? A. I was.

Q. Do you know John J. Skuse? A. I do.

Q. Do you know who presented what is known as the Skuse scrip at the land office April 15th, 1904?

A. I do. [3249—2919]

Q. Who presented it? A. John J. Skuse.

Q. And to whom was it presented?

A. It was presented to me.

Q. And what was done with that scrip?

A. It was rejected by the land office.

Q. The same day? A. The same day.

Q. And was that scrip ever filed or offered for filing after that? A. Not that I know of.

(Testimony of Joseph Molloy.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Joe, do you know whether or not it was afterwards filed on June 11th, 1904, in 37-6 east, by S. P. Fitzgerald? A. I couldn't say as to that.

Q. I wish you would look that up, and we will wait for you while you look it up.

(The witness left the room and returned in a short time.)

Q. What did you find, Joe?

A. I found that on September 26th, 1904, that Skuse filed in 37-6, five different selections.

Q. Who laid the scrip for him?

A. I don't remember. I suppose he did. I don't remember as to that.

Q. Well, did you look for this scrip filed June 11th, 1904, in 37-6 east? A. No.

Q. Well, that is what I told you to look for.

A. July—what is the date?

Mr. TANNAHILL.—That is June 11th, 1904.
[3250—2920]

(The witness left the room, and returned in a short time.)

Q. Well, what do you find this time, Joe?

A. I find that Skuse laid some scrip on September 26th—the same date I named there—1904, on five tracts of land in 37-6.

Q. Did Fitzgerald lay any of this same scrip?

A. There were two pieces laid there in Fitzgerald's name, by someone as attorney-in-fact: I don't remember who it was.

(Testimony of Joseph Molloy.)

Q. I will ask you if Scott is one of them—if Ezra A. Scott is one of them? A. I believe so.

Q. I will ask you, Mr. Molloy, if the scrip that Fitzgerald and Skuse laid is the same base as was laid in 38-5 on April 15th, 1904?

A. Now, to explain that to you: The names in both instances are the same, but the bases may have been different, you understand. For instance, John Campbell may have had 1,000 acres of base, see? and 40 acres or 80 acres of that base was in one selection, and 40 or 80 in another. The record shows the base used in one selection but it doesn't show the base in the other; so I couldn't say whether it is the same base or not.

Q. Now, at the time this scrip was laid in 38-5, on April 15th, is there anything in the records to show by whom that scrip was offered?

A. There is nothing in the records to show, no.

Q. Have you any independent recollection as to that? A. As to this subsequent application?

Q. No—the first application?

A. The first application?

Q. Yes. A. In 38-5 east?

Q. Yes.

A. Yes; that was laid by Skuse—offered by Skuse.

[3251—2921]

Q. Offered by Skuse? A. Yes, sir.

Q. Now, have you any independent recollection as to who offered it subsequently? A. No.

Q. You have no independent recollection?

A. No.

(Testimony of Joseph Molloy.)

Q. Now, do you remember whether Fitzgerald was with Skuse at the time he offered that scrip on April 15th, 1904?

A. I couldn't say as to that. I couldn't say as to who made the nonmineral affidavit.

Q. Well, was Fitzgerald and Skuse together at that time?

A. I couldn't say as to that. It seems to me he was alone when he came and offered the scrip. As to whether the nonmineral affidavit was completed at that time I don't know, but it seems to me he furnished that during the day, later.

Q. Do you know who selected the land for the laying of that scrip? A. No.

Q. You don't know who did that? A. No.

Q. You don't know who cruised it for Skuse?

A. No.

Q. You don't know whether Fitzgerald cruised it for Skuse or not? A. No, I don't know.

Q. And did you see Fitzgerald around the land office at all that day?

A. Well, I couldn't say as to that day; about that time he was around there.

Q. About that time he was around there?

A. Yes, sir.

Q. Do you remember of his making any inquiry about the scrip?

A. I don't remember about that. [3252—2922]

Q. Do you remember the circumstances of it being withdrawn?

A. I believe I do. I believe Mr. Skuse, after we

(Testimony of Joseph Molloy.)

had rejected the applications, before the 30-day period expired, requested me to return the scrip. I think that was it.

Q. And that was after the State had made its selection that the scrip was withdrawn?

A. I couldn't say as to that.

Q. Now, that scrip was filed on April 15th subject to the State's rights, was it not?

A. Subject to the State's rights, yes, and rejected by the land office.

Q. And if there had been someone in line to have reoffered that scrip after it was subject to filing, after the State's rights expired, that would have revived the scrip and made it good?

A. If the State had not selected any of it?

Q. Yes. A. Yes, sir.

Q. And do you have any recollection of Fitzgerald trying to get into that line that was formed there at that time?

A. I do not. I couldn't say whether he was in line or not.

Q. Do you know of his offering Prentice \$500.00 for his place in the line? A. No, I don't.

Q. You was in the land office at that time, was you?

A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Now, there is one question that you were asked there, about the laying of the scrip September 26th, 1904, and the question was about the scrip that Fitzgerald and Skuse laid. There is nothing to show

(Testimony of Joseph Molloy.)

and [3253—2923] you have no independent recollection who offered that scrip, or who presented it, have you? A. No.

Q. And the only connection that you know of that Fitzgerald might have had with that scrip is the fact that he is the assignee of some of the base; is that correct? A. Yes.

**[Testimony of Thomas H. Bartlett, for Complainant
(Recalled in Rebuttal).]**

THOMAS H. BARTLETT, a witness heretofore called and duly sworn, being recalled by the complainant in rebuttal, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Bartlett, I will show you a plat of township 38 north, of range 5 east of the Boise meridian, and also a plat of township 38 north of range 6 east of Boise meridian, and ask you whether or not you have compared those two plats with the original plats in your office of those townships.

A. Yes; I compared them with respect to the topography and the State selections only.

Q. Now, these are correct copies of the original plats of those townships in your office, with what exceptions, Mr. Bartlett? [3254—2924]

A. I have compared them in the way that I have indicated, and have corrected the topography by inserting here and there some little branches on the creeks, and have erased others by marking them out.

Q. And they are substantially correct, are they not? A. Yes; as corrected, yes.

(Testimony of Thomas H. Bartlett.)

Q. They show the State selections as they are, as I understand, with the exception of a couple of quarter sections in— A. I have corrected that matter.

Q. That is corrected, is it?

A. Yes. The State selections appear to be correct, as shown upon both of these plats.

Q. And the creeks and the streams are correct?

A. Yes.

Q. And the Northern Pacific scrip and other scrip indicated on the plats are also correct, are they?

A. Why, I think they are substantially correct.

Mr. GORDON.—We offer these plats in evidence.

Mr. TANNAHILL.—The defendants severally waive any objections that they are not the originals, for the reason that the originals are the records and files of the land office; but object to the admission of either of the plats in evidence upon the ground that they are incompetent, irrelevant and immaterial.

Said plats were thereupon marked by the Reporter as Complainants' Exhibits 118 and 119.

An adjournment was thereupon taken until Monday morning, October 24th, 1910, at ten o'clock A. M.

[3255—2925]

On Monday, the 24th day of October, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of Frank W. Kettenbach, for Defendants
(Recalled).]**

FRANK W. KETTENBACH, a witness heretofore called in behalf of the defendants and duly sworn, being recalled by the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. BABB.)

Q. Now, you may explain what you desired to, Mr. Kettenbach.

A. I would like to say that I have again checked up the list of indebtedness of William F. Kettenbach to the Lewiston National Bank and the Idaho Trust Company, and I think the statements that I gave in here are correct; but I want to say that all of the indebtedness shown in those statements isn't mentioned in the answer which was filed in this case, although the information that was put in that answer was given to my attorney, Mr. Babb, from the lists that are introduced here, and by some means or other all of the items were not gotten in the answer, which is some kind of an oversight which I can't otherwise explain—probably my fault somewhere. That's all.

Mr. BABB.—I might ask him more specifically about the Idaho Trust Company statements there, if we had those exhibits here. I have a letter press copy.

WITNESS.—If I may have that I will make a statement. (Mr. Babb handed same to witness.) In reference to the statements introduced by me of in-

(Testimony of Frank W. Kettenbach.)

debtedness to the Idaho Trust Company, I will say that in checking these up there were two almost immaterial errors discovered. In one [3256—2926] case the note of George H. Kester for \$3,000.00 showed an endorsement of \$36.50, and then showed final payment; while the records corrected, or the correct record shows an endorsement of \$1,500.00 and final payment; and the note of William F. Kettenbach which was introduced here, showing the balance due the Idaho Trust Company now was not quite correctly shown on the list, there being a payment of \$225.00 on the note, which was not—being a payment of \$225.00, in other words, on the note.

Mr. GORDON.—Q. What date?

A. Of date of February 9th, 1910, which was not shown on the list. That is, the note itself introduced here showed the correct endorsement, but there was an oversight in showing the endorsement on the list.

Mr. BABB.—That's all.

Cross-examination.

(By Mr. GORDON.)

Q. Now, may I ask a question or two? Mr. Kettenbach, you are next door neighbor to William F. Kettenbach, are you not? A. Yes.

Q. How long have you lived next door to him?

A. A good many years.

Q. Ten years?

A. More than ten years, probably.

Q. I will ask you whether or not at the time of the making of the deed of July 6th, 1907, made by William F. Kettenbach and George H. Kester to the

(Testimony of Frank W. Kettenbach.)

Idaho Trust Company, and the making of the trust agreement of July 23d, 1907, that you have referred to, William F. Kettenbach was indebted to either the Lewiston National Bank or the Idaho Trust Company, in any amount.

A. Well, if that was executed on the 6th of July, I think that on that date Will Kettenbach owed the Lewiston National Bank an overdraft [3257—2927] of \$11,000.00 or \$12,000.00; but that was fully paid within a day or two after that time.

Q. Now, that instrument, however, was not executed until the 23d of July, was it? No—it was executed the 10th, wasn't it? A. I think the 23d.

Q. The trust agreement was executed the 23d?

A. Well, I mean I think the trust agreement was dated the 23d, but it was made pursuant to the deed and agreement—of the 6th of July.

Q. I will ask you this, whether at the time of the making of the deed and the trust agreement just referred to, William F. Kettenbach was indebted to the Idaho Trust Company in any amount whatever?

A. No. No, he wasn't.

Q. And the deed just referred to and the trust agreement just referred to was not to secure any indebtedness that William F. Kettenbach owed either the Lewiston National Bank or the Idaho Trust Company at the time of the making and execution of either of those instruments, was it?

A. That is correct. At the time of the executing of those instruments Will Kettenbach didn't owe anything to either institution, and there was nothing

(Testimony of Frank W. Kettenbach.)

to secure at that time, and it is only because it provides for the securing of subsequent advances that it secures the advances that were subsequently made.

Q. And the overdraft that you referred to is not secured in any way by either this deed or the trust agreement?

A. I don't think we had that in mind, because I think that while the negotiations—that is, while the instruments were being made up that overdraft was paid in full.

Q. In other words, you made a deposit slip to Will Kettenbach yourself for \$15,000.00 which covered his overdraft of \$11,500.00, I think, and left him a balance?

A. Well, I know positively that I paid him some money, and he got [3258—2928] some money, and the books show that that was all paid at that time.

Q. Well, I mean that was taken up by money which he got from you, and not from any advance from either institution.

A. Well, it wasn't from any advances from either of those institutions, and I think it was from money that I paid him myself. The main reason for taking that instrument was to secure the indebtedness of George H. Kester.

Q. Mr. Kettenbach, do you remember that you spoke of a note given by George H. Kester to the Idaho Trust Company, dated June 26th, 1907, for \$5,000.00? As I remember, that was the first transaction that you showed of Mr. Kester with the Idaho Trust Company. I will ask you whether that was an

(Testimony of Frank W. Kettenbach.)

original transaction; or was that a renewal of something?

A. I couldn't tell without looking up the records of the Idaho Trust Company.

Q. What is your best recollection?

Mr. BABB.—Well, I object to that. The witness says he couldn't tell without looking it up.

Mr. GORDON.—Well, I just wanted to save him the trouble of looking it up.

WITNESS.—I remember that it was a loan of cash to George Kester, but whether that was—whether that loan was renewed or not, and this was a renewal of a former note or not, I can't tell without looking it up.

Q. Well, that is what I want to know, whether that was a renewal of any other loan.

A. I couldn't tell you. If it is important I can go and look up the records.

Mr. GORDON.—I would appreciate it if you would, Mr. Kettenbach. That is all, Mr. Kettenbach.
[3259—2929]

**[Testimony of G. W. Comerford, for Complainant
(in Rebuttal).]**

G. W. COMERFORD, a witness called in behalf of the complainant, in rebuttal, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. G. W. Comerford.

Q. And what is your occupation?

A. Special Agent of the General Land Office.

(Testimony of G. W. Comerford.)

Q. And, Mr. Comerford, how long have you held your present position? How long have you been an employee of the General Land Office?

A. A little over three years.

Q. A little over three years? A. Yes, sir.

Q. And you have been assisting in the investigation of the cases that are now being tried, to a certain extent, have you not? A. To a certain extent.

Q. And you have been in Lewiston, Idaho, for the last two months?

A. Off and on—not here all the time.

Q. And do you know the defendant William Dwyer? A. I do.

Q. And do you remember about the date that Mr. Dwyer returned to Lewiston from Portland, where the Government had been taking the testimony in this case in the last month?

A. I remember about the date I saw him after that.

Q. Well, when was that?

A. Well, that was along about the 26th of September.

Q. And did you have a talk with him at Lewiston?

A. I did, two or three times, along about the 26th or 27th of September.

Q. I will ask you whether or not in the conversation which you [3260—2930] had with Mr. Dwyer he stated to you that the aggregate amount of what is known as the circle K. checks were between \$50,000.00 and \$60,000.00?

A. Yes; he stated it in this way: He said that “I saw your friend O’Bleness at Portland, and he and

(Testimony of G. W. Comerford.)

Mr. Gordon seemed to be mixed up in regard to the amount of the circle K. checks. I never told them that it was \$100,000.00 circle K. checks, but that they purchased upwards of \$100,000.00 worth of land there. The circle K. checks only amounted to something between \$50,000.00 and \$60,000.00."

Cross-examination.

(By Mr. TANNAHILL.)

Q. Now, wasn't he referring to the evidence of John E. Chapman given at Boise—or at Portland?

A. That is, as to the checks amounting to \$60,000.00?

Q. No. Wasn't he discussing the evidence given by Chapman?

A. Well, that is the way it first started out, yes. The first thing that brought it up was Chapman. I asked him if Chapman had testified as some people here said he had, or something like that. I didn't know what Chapman had testified to, myself.

Q. Didn't Dwyer say that Chapman had cut the checks in two? A. No, not to me.

Q. And didn't he tell you that Chapman had cut them in two, and if he had cut them in two again he would have them about right; or words to that effect?

A. No, I don't think so, Mr. Tannahill.

Q. Nothing of that kind? A. No, sir.

Q. Where did this conversation take place?

A. In the Raymond Hotel.

Q. Who else was present?

A. Who was in the hotel at the time? [3261—2931]

(Testimony of G. W. Comerford.)

Q. Yes.

A. Oh, I haven't the slightest idea. There was nobody talking with us.

Q. Where was you talking?

A. It was next to the door there. In fact, it was a matter that I hadn't paid any attention to or thought particularly about, because I didn't know anything about the circle K. checks myself.

Q. Were you sitting or standing when you were talking?

A. We were standing. I was just getting ready to go out on some other business. It wasn't conversation at the time that I thought was of any particular importance.

Q. Now, what was said in that conversation?

A. Other than about this?

Q. Yes. Well, just repeat again what was said in the conversation.

A. Well, the way it came up, something was said about Chapman—it was only just a running conversation—and he spoke about seeing Mr. O'Bleness there, and he said O'Bleness and Gordon were mixed up on the matter of the circle K. checks. He says, "I told them that they had purchased upwards of \$100,000.00 worth of lands there." He said, "The circle K. checks only amounted to something between \$50,000.00 and \$60,000.00."

Q. Now, what else was said?

A. Why, that is the only thing that I call to mind, and I wouldn't have thought of that if I hadn't been sitting here when Mr. Dwyer testified. I never even

(Testimony of G. W. Comerford.)

mentioned it to anybody until his testimony here that it was something like \$20,000.00. That called my attention to—

Q. And you can't remember what was said about Chapman?

A. Why, nothing to any particular extent that I remember at all.

Q. Well, was anything to any extent at all said about him? [3262—2932]

A. I think it came up simply over the question that something was said about Chapman. Somebody had mentioned him to me before, and wanted to know if Chapman had gone back on his former testimony, or something like that, on account of a newspaper report, and I told them I didn't know anything about it—I hadn't been there—and—

Q. Now, how long were you and Dwyer talking?

A. At that time?

Q. Yes.

A. Just a couple of minutes. And then afterwards I asked him about where Mr. Bliss was, I believe, and that afternoon we rode from Clarkston over here together in his buggy, but nothing was said at that time about the case.

Q. You can't remember anything that was said in the conversation except concerning the circle K. checks?

A. That is all that is brought back to my attention now, and that Mr. O'Bleness and Mr. Gordon were mixed up with the circle K. checks; that he had never told them it was \$100,000.00.

(Testimony of G. W. Comerford.)

Q. And you never thought of that until—

A. — until I heard Mr. Dwyer's own testimony here.

Redirect Examination.

(By Mr. GORDON.)

Q. And you had never said anything about it then, except when you heard Mr. Dwyer testify to that you advised me to that effect?

A. That's all. It simply came back to my attention. I expected him to say \$50,000.00 or \$60,000.00, and when he said \$20,000.00 that kind of surprised me. [3263—2933]

[**Testimony of J. B. Lafferty, for Complainant (in Rebuttal).**]

J. B. LAFFERTY, a witness called in behalf of the complainant, in rebuttal, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your full name, please?

A. J. B. Lafferty.

Q. I will ask you, Mr. Lafferty, if in the years 1903 and 1904 you were employed in some capacity by the State of Idaho? A. I was.

Q. State what your employment was.

A. I was employed in the State Land Department at times, cruising, estimating, selecting timber, and at other times when there was no field work at office work.

Q. By whom were you employed?

A. I was employed by the State Land Board—I

(Testimony of J. B. Lafferty.)

presume the Governor.

Q. Who was the Governor then?

A. John T. Morrison.

Q. And were you an inmate of his house at that time? Did you live with him at that time?

A. I did; yes.

Q. And when were you first employed? When did this employment begin? A. In June, 1903.

Q. And you remained in the employment of the State until when?

A. Until the expiration of December, 1904.

Q. I will ask you if you had anything to do with any State selections—any State land selections—in the spring of 1904? A. I did.

Q. Well, now, state what you did. [3264—2934]

A. This is with reference to lands on the North Fork of the Clearwater.

Q. On the North Fork of the Clearwater, yes.

A. I was sent to Lewiston.

Q. By whom?

A. By the Clerk of the Land Department. Norman Jackson, to meet Mr. Goldsmith.

Q. Mr. M. L. Goldsmith?

A. Mr. M. L. Goldsmith, and assist him in cruising timber in townships 38, 39 and 40, ranges 5 and 6 east. I arrived in Lewiston on March 22d, 1904. I met Mr. Goldsmith.

Q. Did you arrive the first time March 22d?

A. Yes, sir.

Q. All right.

A. I met Mr. Goldsmith and some of the men who

(Testimony of J. B. Lafferty.)

were to accompany us, and went to North Lapwai with Mr. Goldsmith on March 24th.

Q. Did you meet Mr. Dwyer here, in company with Mr. Goldsmith, on the 22d of March? A. I did.

Q. And you say you went to North Lapwai on the 24th? A. I did.

Q. Of March, 1904? A. Of March.

Q. And how far is North Lapwai from Lewiston?

A. Well, I don't remember.

Q. Oh, I mean approximately.

A. It must be about 12 or 15 miles.

Q. And did you go alone, or did you go with someone?

A. If I remember correctly, I went with Mr. Goldsmith, and I believe Mr. Dwyer was on the train that day. [3265—2935]

Q. Did you return to Lewiston from North Lapwai?

A. No, sir. If I remember correctly, Mr. Dwyer continued on that day to Orofino.

Q. Do you know for what purpose?

A. To get the crew that we were going to pick up at Orofino in readiness, and have supplies there.

Q. And did you later go to Orofino?

A. On March 26th I went to Orofino with Mr. Goldsmith, Mr. Scott, Mr. Gatewood and Mr. Tigh.

Q. Who did you meet or see when you got to Orofino?

A. Well, I met Mr. Dwyer, and I met Mr. John Snyder, of the crew that was to go with us.

Q. Any others that you remember? Do you re-

(Testimony of J. B. Lafferty.)

member whether you met Mr. Bliss there?

A. I don't remember Mr. Bliss.

Q. Well, what day was that that you arrived at Orofino? A. March 26th.

Q. And did you go farther into the timber?

A. Yes, sir; we left Orofino on March 27th.

Q. And who is "we," or who were "we"?

A. The crew. Do you want the names?

Q. Well, I want to know if Mr. Dwyer and Mr. Goldsmith went with you.

A. Mr. Dwyer and Mr. Goldsmith were with the party.

Q. And the other persons you have mentioned?

A. And the other persons, yes, sir.

Q. And how long did you remain in the timber, cruising and estimating? How long did the party remain in the timber?

A. We reached Mr. Reed's cabin on March 29th and began work there. [3266—2936]

Q. That was in the timber, was it?

A. Yes, that was about the beginning of the work; and in coming out with my crew I passed Mr. Reed's cabin on April—it was either the 16th or 17th. We were in the timber actually working about 16½ days.

Q. And did you come from Reed's cabin with anyone? Did the rest of the party come out at that time?

A. My party—we divided at Reed's cabin in going out. There were two parties formed.

Q. That is, in going into the timber?

A. Going into the timber we divided into two parties, and I came out past Reed's cabin with my party.

(Testimony of J. B. Lafferty.)

Q. Now, who were with your party?

A. Mr. Gatewood, Mr.—

Q. Snyder?

A. Snyder, and I wouldn't be positive of the other man's name. You mentioned a Mr. Bliss, didn't you?

Q. Yes.

A. I haven't any record of that name. I think it was either Mr. Tigh or Mr. Stansbury.

Q. And the others of the party that you have mentioned were with Mr. Dwyer and Mr. Goldsmith's party, were they? A. Yes, sir.

Q. And did they return to Orofino with your party from Reed's cabin?

A. No. We didn't meet them again until we reached Orofino.

Q. They were at Orofino when you got there coming out, or did they come afterwards?

A. If I remember correctly they were there when we reached there, or they came immediately afterwards if they were not. [3267—2937]

Q. And did the entire party come to Lewiston together?

A. No. There were some were picked up at Orofino.

Q. I mean from Orofino to Lewiston. Who came with you?

A. I believe the entire party, excepting Mr. Snyder.

Q. Was Mr. Dwyer and Mr. Goldsmith with you in the party?

A. If I remember correctly, they were.

(Testimony of J. B. Lafferty.)

Q. And what date did you get to Lewiston?

A. April 18th.

Q. And during that period do you know how much timber land the party had gone over and cruised that was subsequently selected—approximately?

A. Which? The whole party? The entire party?

Q. Yes.

A. I don't know only the selections that I made.

Q. Well, about how many thousand acres did you select? A. I believe about 13,000.

Q. And do you remember how much was selected by the State at that time? Was it upwards of 50,000 acres? A. I don't remember definitely.

Q. Now, after that you reported to the land office at Lewiston, did you—to the Land Board at Boise, did you not? A. Yes, sir.

Q. I mean you went back to Boise?

A. Well, I came from Orofino to Lewiston and assisted in making out the selection lists. I met Mr. Norman Jackson in Lewiston, and when the selections were made I went to Boise.

Q. Then did you return to Lewiston later and go into the timber to look over some selections you had made? A. I did.

Q. When was that [3268—2938]

A. That was during the latter part of July.

Q. Of the same year—1904?

A. Of that same year, yes, sir.

Q. And what ground did you go over then—what townships?

A. I went over township 40 north, ranges 5 and 6

(Testimony of J. B. Lafferty.)

east that I had been over before, besides some new land that had not been opened to entry yet.

Q. And how long did you remain in the timber on that occasion? A. About two months.

Q. And did you return to Orofino from the timber directly? A. I did.

Q. Did you see Mr. Dwyer at Orofino?

A. I met Mr. Dwyer at Orofino.

Q. Did you have any conversation with him?

A. I did.

Q. Will you state what that was?

A. It was, I think, on September 25th or 26th; I met him on the streets in Orofino, and he asked me where I had been, and what I had been doing, and I told him and he asked what land I had examined, and I told him as nearly as I could, and he asked what my report was going to be on a certain tract of timber, consisting of about 800 acres.

Q. In what township?

A. In Sections 28, 29, 32 and 33, in township 37 north, range 7 east. The plats had not been filed yet in those, although the surveys had been made. I had been sent in there by the State to examine it and report upon the timber. I told him that I expected to report to the State Land Department the exact conditions and he wanted to know whether I would recommend that they select this piece of land or not. He said of course the State's action would be based upon my recommendation; and he further said that he was going in there for a company to look [3269—2939] over the land and he would like to get what

(Testimony of J. B. Lafferty.)

information he could, and that his company was willing to pay for any information they could get, and I told him that if he wanted advance information he would have to get it from the State Land Department, as I was hired by them and expected to report directly to them.

Q. You left him there, did you? A. I did.

Q. And then you went back to Boise? A. I did.

Q. When you returned to Boise did you make any recommendation to the Board relative to relinquishing some of the land that had gone in the selection and that you had cruised in March and April preceding that time? A. I did.

Q. And do you know whether they did relinquish the land that you recommended be relinquished?

A. My recommendation was not acted upon during the Morrison administration. I was later informed that they relinquished most all that I recommended, and some more—in township 40 north, range 5 east.

Q. Well, was there some that you didn't recommend to be relinquished that was relinquished?

A. Yes; there was some that I recommended to be held that was relinquished.

Q. Now, do you know what or some of the quarter sections that you recommended be held that was relinquished after your termination of office?

A. Do you want the descriptions?

Q. Yes.

A. Well, all the east half of section 12; the west half of the NE. $\frac{1}{4}$, the NW. $\frac{1}{4}$, and the south half of Section 13; the E. half of the [3270—2940] NW.

(Testimony of J. B. Lafferty.)

$\frac{1}{4}$, the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, and the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of section 17; the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of section 20; the N. $\frac{1}{2}$ of the NW. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the N. $\frac{1}{2}$ of the SW. $\frac{1}{4}$, and the SE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of section 21; the S. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the S. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of section 24; the N. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the N. $\frac{1}{2}$ of the NW. $\frac{1}{4}$, and the E. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of section 25; were subsequently relinquished.

Mr. TANNAHILL.—What township and range?

A. Township 40 north, range 5 east.

Mr. GORDON.—Q. And are they the ones that you recommended to be retained?

A. Yes, sir.

Q. Now, do you know what became of the west half of the southwest quarter of section 1, and the north half of the northwest quarter of section 12?

A. Why, I know only from the plat-books in the land office.

Q. Here? A. Yes, sir.

Q. And what do they show?

A. They show that it was taken by J. B. West.

Q. By Timber and Stone?

A. By Timber and Stone.

Q. Do you know what became of the north half of the northwest quarter of section 13, and the southeast quarter of the northwest quarter of section 13, township 40 north, range 5 east?

A. The records show that it was taken by Susie M. West.

Q. And is that J. B. West that you have referred

(Testimony of J. B. Lafferty.)

to the man who was the Register or Receiver of the land office at Lewiston?

A. It is the same name, and I presume the same man.

Q. And Susie M. West; do you know whether she is his wife or not? A. I don't know her.

[3271—2941]

Cross-examination.

(By Mr. TANNAHILL.)

Q. What was the date that J. B. West and Susie M. West took that land?

A. I didn't look at the date.

Q. You didn't look at the date they took it?

A. No, I didn't.

Q. You don't know how long that land laid there vacant, then, after the State relinquished it, do you?

A. No, I don't.

Q. Now, don't you know that that land was not worth a cent, and laid there vacant for years after the State had relinquished, before anyone would have it at all?

A. As I say, I didn't look at the dates; I simply looked on the books for the names.

Q. Well, do you know whether the timber on it is any good? A. I do.

Q. What is it? A. What do you mean?

Q. How much timber is there on the quarter section?

A. I didn't make a close estimate. There would be anywhere from five to eight thousand feet per acre.

Q. From five to eight thousand feet per acre?

(Testimony of J. B. Lafferty.)

A. Yes, sir.

Q. How do you estimate timber?

A. When I make a close estimate, I usually count the trees.

Q. You usually count the trees—on how much of the quarter section? A. On all of it.

Q. On all of it? [3272—2942]

A. But I didn't make a close estimate of it; I simply walked through it, and judged from my past experience of timber.

Q. Is it first or second growth of timber?

A. It is second growth of timber.

Q. How large are the trees generally?

A. They will run from six inches up to sixteen or twenty inches.

Q. Now, as a matter of fact, Kester or Kettenbach, they own no land in township 40, range 5 east, do they? A. I don't know what they own.

Q. You don't know whether they do or not?

A. I do not.

Q. Now, this township that you say Mr. Dwyer was asking you about—wanting information about—that was Forest Reserve, was it not?

A. It is at the present time, yes. It was put in Forest two years after that.

Q. Two years after that? A. Yes.

Q. Now, when was it you say you made this selection? A. Which selection?

Q. When was it you say you estimated or viewed this timber that was taken into the Forest Reserve?

A. It was in September, 1904.

(Testimony of J. B. Lafferty.)

Q. And when was it you say you had this conversation with Dwyer?

A. In September, 1904; either September 25th or 26.

Q. And where did it take place? At Orofino.

Q. What place in Orofino?

A. It was on the sidewalk, near a livery-stable.

Q. And was there anyone else present? [3273—
2943] A. There was no one else present.

Q. No one else with you? A. No, sir.

Q. And no one else with Mr. Dwyer?

A. No, sir.

Q. Now, what else was said in that conversation?

A. It was either at that time or during that day that I talked with him about selling a pack string—selling the horses—selling our horses and pack outfit.

Q. Was Melvern C. Scott with you on that trip?

A. I don't remember.

Q. You don't know whether he was at Orofino or not? A. Did you say he was with me?

Q. Yes; was he with you on that trip?

A. No, he was not with me.

Q. Was he with you at Orofino?

A. I don't remember of seeing Mr. Scott at that time. He may have been there.

Q. Now, didn't Mr. Dwyer ask you about some cabins that had been built on that land by some people from Wallace?

A. I don't remember any conversation of that kind.

Q. Do you remember any statement that was made

(Testimony of J. B. Lafferty.)

concerning any cabins that was on the land, at all?

A. I don't remember anything.

Q. Now, you don't remember whether Scott was with you or not? A. He was not with my party.

Q. He was not with your party? A. No, sir.

Q. And you don't know whether he was with you in Orofino that day or not? [3274—2944]

A. I don't remember of seeing him.

Q. Now, isn't it a fact that Melvern C. Scott went into that land with you, and helped you to look the land over? A. No, he didn't go in there.

Q. He wasn't with you at all?

A. Not on that trip.

Q. At any time?

A. Not when we were looking that land over.

Q. Now, didn't Dwyer also ask you about some notices that were on that land?

A. I don't remember him asking that.

Q. You found notices posted over the land, didn't you? A. I found some notices, yes.

Q. A great many notices?

A. Well, there were—in these particular pieces he asked about, you mean?

Q. Yes. A. I would say there were five or six.

Q. Five or six? A. Yes.

Q. And didn't Dwyer ask you about those notices?

A. He may have; I don't remember about that.

Q. And he was inquiring very closely about the conditions that you found on the land, was he not?

A. Yes.

Q. And you finally told him that you couldn't give

(Testimony of J. B. Lafferty.)

him any information? A. Yes.

Q. Now, there was about 3,000 of this 13,000 acres of land that you selected in 38-5 and 6 east that was also relinquished by the State [3275—2945] Land Board?

A. In 38 which?

Q. Yes. A. What was the description?

Q. About 3,000 acres of this land which you selected in 38-5 and 6 East?

A. I selected no land in—

Q. There was about 3,000 acres of land that you selected in 40-5 East that was relinquished, was there not? A. I believe so.

Q. And do you know on whose recommendation that was relinquished?

A. No, I don't, no more than I know the recommendation I made.

Q. How?

A. I say I know the recommendation, the amount that I recommended be relinquished; but I presume it was looked over afterwards.

Q. Now, there was no land that was selected by Mr. Dwyer and Mr. Goldsmith that was relinquished, was there? A. Not to my knowledge.

Q. That was all retained?

A. I didn't look that over myself.

Q. Well, don't you know that the State Land Board, after some circulars were printed and some letters were sent to the State Land Board concerning charges against Mr. Dwyer and Mr. Goldsmith, that the State Land Board had Mr. Fisher go in

(Testimony of J. B. Lafferty.)

there and recheck that and look it over?

A. No.

Q. Don't you remember about that? A. No.

Q. Don't you know that the State did have it rechecked, and looked it over?

A. I don't know for sure that they did. [3276—2946]

Q. And that this rechecking and subsequent investigation caused the relinquishing of about 3,000 acres that you had selected?

A. I recommended that 2,900 acres be relinquished, myself.

Q. And you recommended that no land be relinquished that Dwyer and Goldsmith had selected, did you? A. I didn't look over their land.

Q. Do you know who did look it over?

A. No, I don't.

Q. And there has been no complaint from the State Land Board of the land that Dwyer and Goldsmith selected, has there? A. I never have heard of any.

Q. Now, how did you select this land in 40 and 5? How did you look it over?

A. You mean how did I get over the country?

Q. Yes. A. We were on snowshoes and afoot.

Q. And did you climb trees and look over the land in that way? A. I climbed trees, yes.

Q. And didn't you look over the country from the trees when you were up in the trees?

A. I did at times, yes, as well as looking at it on our way through.

Q. And that is the way you selected the land

(Testimony of J. B. Lafferty.)

wherein 3,000 acres was subsequently relinquished?

A. That was one of the methods, the same as looking it over on the ground.

Q. Now, was there any land up there that you selected or estimated by the counting of the trees?

A. No.

Q. And you say you didn't estimate any of this land that J. B. West and Susie M. West filed on, by the counting of the trees? [3277—2947]

A. I did not.

Q. And you don't know when they filed on their land? A. I do not.

Q. And you don't know how long it remained vacant after the State relinquished it? A. I do not.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all.

Mr. GORDON.—It is stipulated that the relinquishment of the State in township 40-5 east was authorized by Letter G of the Commissioner of the General Land Office, September 9th, 1905, and filed in the land office at Lewiston, Idaho, September 20th, 1905, and the land was thereby thrown open for entry on that date; and that the Timber and Stone Entry of J. B. West heretofore referred to, final proof was made upon the same September 28th, 1906; and that the final proof was made on the Timber and Stone Entry of Susie M. West September 28th, 1906; and it is further stipulated that Susie M. West is the wife of John B. West.

It is further stipulated that John B. West made Timber and Stone Entry No. 2145 on June 20th.

1906, for the land heretofore referred to, and that he made final proof on September 28th, 1906, and that Final Receipt No. 5701 was issued to said John B. West for said land on September 28th, 1906. [3278—2948]

It is further stipulated that Susie M. West made Timber and Stone Entry No. 2142 on June 20th, 1906, for the land heretofore referred to, and that she made final proof on September 28th, 1906, and that Final Receipt No. 5700 was issued to said Susie M. West on September 28th, 1906. [3279—2949]

[Testimony of Frank W. Kettenbach, for Defendants (Recalled).]

FRANK W. KETTENBACH, a witness heretofore called by the defendants, and duly sworn, being recalled for further cross-examination, testified as follows, to wit:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Kettenbach, what did you find about the \$5,000.00 note of George H. Kester's that you said you would look up?

A. The note mentioned, to wit: the note of George H. Kester for \$5,000.00, in favor of the Idaho Trust Company, dated June 26th, 1907, and paid July 9th, 1907, was a renewal of a former loan, which is shown on the Register of the Idaho Trust Company as being dated December 26th, 1906, and paid June 29th, 1907. This statement, of course, means paid by renewal.

Q. Yes. Well, now, that last you read is an original transaction? There wasn't one back of that, that

(Testimony of Frank W. Kettenbach.)

that was a renewal of, was there?

A. I looked over the Register and failed to find any record of any former note; so I take it that it was an original transaction at that time.

Mr. GORDON.—That's all.

Mr. BABB.—That's all. [3280—2950]

**[Testimony of Lewis M. Gray, for Complainant
(Recalled in Rebuttal).]**

LEWIS M. GRAY, a witness heretofore called by the complainant and duly sworn, being recalled by the complainant in rebuttal, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Gray, have you looked at the books of the Lewiston National Bank and noted loans that were made by that institution to M. L. Goldsmith, from December 1st, 1903, down to and including March 4th, 1904? A. Yes.

Q. I will ask you what the books of that bank show.

A. The books show that on December 30th, 1903, they discounted a note of M. L. Goldsmith for \$1,000.00, with collateral; it doesn't state what the collateral is. And on February 23, 1904, they discounted a note for \$3,000.00? It doesn't say anything about any collateral at all, or any endorsement. On June 29th they discounted a note for M. L. Goldsmith of \$7,000.00, without any collateral; and on the same day the \$1,000.00 and the \$3,000.00 note that I referred to as being discounted December 30th and February

(Testimony of Lewis M. Gray.)

23d were paid.

Q. How were they paid, do you know?

A. They apparently were paid out of this \$7,000.00 note that was discounted. In other words, they paid the \$4,000.00 and had a new note for \$7,000.00. They gave him \$3,000.00 additional to what he had—increased his loan \$3,000.00.

Q. Now, you have a credit there of something.

A. And that was paid—on September 20th there was a payment of—

Q. What year?

A. 1904—there was a payment of \$2,500.00; October 3d a payment of \$1,500.00; on December 3d a payment of \$500.00, and on March 4th, \$2,500.00. That makes the \$7,000.00 note paid up. March 4th, [3281—2951] 1905, is the last payment there. That cleaned the note out.

Q. Now, what are the credits there?

A. Then, in his bank account, on March 4th, 1905, he had a deposit of \$3,866.00. That was a check for \$2,000.00, and another check for \$1,866.00. There is no record as to whose checks those were. And on the same day he was credited with \$2,545.00. That is that note of \$2,500.00 and \$45.00 interest. Prior to March 4th, 1905, temporarily his account was overdrawn here and there—\$20.00 or \$50.00, or something like that.

Q. Have you looked in the books of the Lewiston National Bank to ascertain whether or not C. W. Colby had an account with that institution in June, 1903?

(Testimony of Lewis M. Gray.)

A. I didn't find any such account in the ledger.

Q. The other day when Mr. Kettenbach was testifying he referred to some notes of William Dwyer and Kittie E. Dwyer, that they were secured by a mortgage, and these notes aggregated \$12,100.00, and he stated that they were assigned to the Idaho Trust Company. I will ask you whether you have looked in the books of the Lewiston National Bank and learned when those notes were first discounted, and whether they were assigned to the Idaho Trust Company, and reassigned to the Lewiston National Bank. You may state what information you have on that subject.

A. Well, I haven't the record here as to when any of the notes were first discounted, because they run back for some time.

Q. Yes—what have you there?

A. But on October 29th, 1908, the bank held two notes of William E. Dwyer and Kittie E. Dwyer—

Q. William, isn't it?

A. William Dwyer and Kittie E., it should be.

Q. This is in the Lewiston National Bank?

A. The Lewiston National Bank held two notes, one for \$7,100.00. [3282—2952] and one for \$5,800.00, making \$12,900.00.

Q. When was that?

A. On October 28th, 1908; they had those notes on their Discount Register on that date.

Q. Was it a joint note?

A. Yes; and on that day they assigned them over to the Idaho Trust Company, and the Idaho Trust

(Testimony of Lewis M. Gray.)

Company paid them for them. On January 2d, 1909, the bank took over from the Idaho Trust Company—

Q. That is the Lewiston National Bank?

A. The Lewiston National Bank took over from the Idaho Trust Company—

Q. That is the Lewiston National Bank?

A. The Lewiston National Bank took over from the Idaho Trust Company one note of William Dwyer and Kittie E. Dwyer for \$14,056.00. That note was dated December 31st, 1908, payable on demand. It went into the Discount Register of the Lewiston National Bank on January 2d, 1909. On February 5th, 1909, the bank transferred that note again to the Idaho Trust Company—\$14,056.00—and from that time it apparently was held by the Idaho Trust Company.

Q. Is that all you have?

A. That is all I have on that.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Gray, you say that the books of the bank show that a note of M. L. Goldsmith was discounted. Now, will you explain what you mean by “discounted,” whether it was an original note of Mr. Goldsmith’s, or whether it was a note of someone else?

A. It was a note signed by Mr. Goldsmith, and the Lewiston National Bank loaned him the money on it and took that note in their assets.

Q. They loaned Goldsmith the money?

(Testimony of Lewis M. Gray.)

A. They loaned Goldsmith the money—that is, as far as it shows on the books.

Q. You don't know whether it was a note that Mr. Goldsmith had [3283—2953] given to someone else and it was purchased by the Lewiston National Bank, do you?

A. The record of the books and the way of keeping the books shows that it came direct from Mr. Goldsmith, because if it came from anybody else, ordinarily there would be an endorser on it, and the books would state that endorser, and there was no endorser put down at all.

Q. And if there was an endorser on the note, it wasn't so noted in the books?

A. It wasn't so noted in the books.

Q. You have discovered frequently, have you not, that they have endorsers on the notes and the endorser not noted on the books?

A. Well, I haven't been able to find that out. There are a good many notes of the Lewiston National Bank that don't show any endorsers at all; but I haven't come across any notes at all that I knew there was an endorser that it didn't appear on the books.

Q. Now, you say there was no account of C. W. Colby in the year—shown by the bank-books in the year 1903?

A. Nothing on the Individual Depositors' Ledger.

Q. I will ask you if there was an account of Colby, Coryell & Howe?

A. I didn't find any such account on the ledger.

(Testimony of Lewis M. Gray.)

Q. Did you find any such account prior to 1903?

A. I didn't go prior to 1903.

Q. And you didn't go prior to 1903 for an account of Mr. Colby—C. W. Colby?

A. I did not. I didn't have the ledger there prior to 1903, anyway.

Q. Now, this note you say of William Dwyer and Kittie E. Dwyer [3284—2954] originated in the Lewiston National Bank?

A. To the best of my knowledge and belief it originated there.

Q. And it was afterwards transferred to the Idaho Trust Company?

A. Yes, transferred to the Idaho Trust Company.

Q. And then that same note was retransferred to the Lewiston National Bank? A. Yes.

Q. Now, did you find any evidence of a renewal of that note, or an additional note?

A. No, not at that time. The \$7,100.00 and \$5,-800.00 notes, amounting to \$12,900.00, were apparently renewed in the note of \$14,056.00, and that was dated December 31st, 1908, on demand, and was held by the Idaho Trust Company. Of course, I have no access to the Idaho Trust Company's books to know anything more about it than that; but that apparently was the last renewal.

Q. But, anyway, the note finally got back into the Idaho Trust Company?

A. It got back there, yes, in February, 1909.

Q. Now, you don't wish to be understood as saying that the Lewiston National Bank suffered any loss

(Testimony of Lewis M. Gray.)

by any of these transactions?

A. No, I can't say that they suffered any loss in that respect, as far as it shows.

Q. The notes were paid, were they?

A. The bank got its money; it got that \$14,056.00 from the Idaho Trust Company; and further than that I know nothing.

Mr. TANNAHILL.—That's all.

Mr. BABB.—Q. Mr. Gray, with reference to this note of \$14,056.00, I believe [3285—2955] you stated that you found that the Idaho Trust Company transferred that to the Lewiston National. Now, I will ask you to state whether you are able to state whether it was a transfer, or whether it was a new loan made to the Lewiston National, which was used to take up the note from the Idaho Trust Company.

A. Well, from the appearance of it, the two notes were payable on the 31st of December, 1908, and the new note for \$14,056.00, that included the interest on the other two notes to that time. It was apparently discounted by the Idaho Trust Company on the 31st of December, 1908, but I can't tell any further than that, except on January 2d, 1909, the note goes into the bank, and they give the Idaho Trust Company the money for it.

Q. There is nothing there to indicate especially whether it was assigned to the bank, or whether a new loan was made to the bank to take it up?

A. No, there is nothing further than that.

Mr. BABB.—That's all.

Mr. GORDON.—That's all, Mr. Gray. [3286—

Mr. BABB.—It is stipulated and agreed by and between the parties that the records will show that a mortgage was duly executed and released, of which the following is a correct abstract of the material portions thereof, said mortgage having been duly recorded as shown by this abstract, to wit:

Mortgage.

Clarence W. Robnett and Jannie M. Robnett, his wife, mortgagors to O. E. Guernsey, mortgagee.

Dated March 15, 1904.

Recorded March 21, 1904, Book "P" of Mortgages, page 602.

Consideration, \$3,000.00.

Duly acknowledged March 15, 1904, before John E. Nickerson, a Notary Public in and for the County of Shoshone, State of Idaho, (Seal.) Wife examined separate and apart from husband.

Given to secure payment of one note of even date, due March 15, 1905, with interest at six per cent. per annum after due.

Description: The following real estate in Shoshone County, Idaho, to wit: All of Section 35, in Township 34 North, of Range No. 5 East, B. M., containing 640 acres. Also, the S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 15, Township 39 North, Range 3 East, B. M., containing 160 acres. Also, the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Section 15, Township 39 North, Range 3 East, B. M., containing 160 acres.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. BABB.—It is also stipulated and agreed that

the following is a correct abstract of the release of the mortgage last above described:

O. E. Guernsey to Clarence W. Robnett and Jennie M. Robnett.

Dated April 30, 1907. Recorded July 6, 1907, at 4 P. M.

Certifies and declares that a certain mortgage bearing date the [3287—2957] 15th day of March, A. D. 1904, made and executed by Clarence W. Robnett and Jennie M. Robnett to O. E. Guernsey, recorded in the office of the County Recorder of Shoshone (now Nez Perce) County, State of Idaho, in Book P, of Mortgages, at page 602, on the 21st day of March, A. D. 1904, together with the debt thereby secured, is fully paid, satisfied and discharged.

(Signed:) O. E. GUERNSEY. [Seal]

Witnesses:

HELEN D. EDMISTON.

H. W. NEWTON.

Acknowledgment: Duly acknowledged April 30, 1907, before H. W. Newton, Notary Public, County of Nez Perce, State of Idaho. (Seal.)

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial. [3288—2958]

[Testimony of James E. Babb, for Defendants.]

JAMES E. BABB, being called as a witness in behalf of the defendants, and his oath as a witness being waived by counsel for the respective parties, testified as follows, to wit:

Direct Examination.

Mr. BABB.—I desire to state that this opinion of

(Testimony of James E. Babb.)

title which I hold in my hand, signed by George H. Pickett, is the opinion of title which was referred to by Mr. William Deary in his testimony the other day. At that time I found that I had accidentally left it at the office, and I desire it to go in the record, and I offer it in evidence at this time, so as to clear up the testimony of Mr. Deary in referring to it. I think that perhaps George G. Pickett is referred to in the record as Charles. That is an error, and it should be corrected. His name is George G. Pickett.

Mr. GORDON.—I will waive any further identification of the opinion, but object to it on the ground that it is incompetent, irrelevant and immaterial.

Said opinion of title was thereupon marked by the Reporter as Defendants' Exhibit U-2.

Mr. GORDON.—In view of the fact that Defendants' Exhibits W-1, X-1, Y-1 and O-2 have been checked by complainant with the records of the Idaho Trust Company, the complainant withdraws its objection to the introduction of said exhibits on the ground that the records were not produced.

It is stipulated by and between the parties that the records of the office of the County Recorder of Shoshone County will show that a receiver's receipt was issued by the receiver of the United States Land Office at Lewiston, Idaho, to Robert O. Waldman, May 25th, 1903, for lots 2, 3, 6 and 7, section 30, township 38 north, of range 2 east, of Boise meridian, and that the same was recorded October 2d 1903, in the office of the Recorder of Shoshone County, Idaho, in Miscellaneous Book O, at page 291; that a deed,

properly executed and acknowledged was [3289—2959] made by Robert O. Waldman and wife Maud M. Waldman, May 26th, 1903, and recorded October 2, 1903, in the office of the Recorder of Shoshone County, Idaho, in Deed Book 25, at page 309, conveying to Clarence W. Robnett, in consideration of \$1500.00, the land last above described. That said Clarence W. Robnett and Jennie M. Robnett, his wife, made and executed a mortgage to John F. McKissock, dated September 24th, 1903, and recorded April 2, 1903, in the office of the Recorder of Shoshone County, Idaho, in Book P, of Mortgages, at page 447, conveying to said McKissock the last above described land, to secure a promissory note of even date in the sum of \$500.00, payable in one year after date, with interest at the rate of ten per cent per annum; that said mortgage was released July 6th, 1907, said release being recorded on the same date in the office of the Recorder of Nez Perce County, Idaho. That Clarence W. Robnett and wife Jennie M., by deed dated July 8th, 1907, conveyed Lots 2, 3, 6 and 7, 5 and 8, and the east half of the southwest quarter of section 30, township 38 north, or range 2 east, of Boise meridian, containing 310.40 acres, in consideration of one dollar, to Elizabeth White, and that said deed was properly executed and acknowledged, and recorded in the office of the Recorder of Nez Perce County, Idaho, July 8th, 1907, in Book, of Deeds, at page That Elizabeth White, by a quitclaim deed properly executed and acknowledged, dated October 25th, 1907, in consideration of one

dollar, quitclaimed to the Lewiston National Bank lots 2, 3, 6 and 7 of section 30, and lots 5 and 8 and the east half of the southwest quarter of section 30, in township 38 north, of range 2 east, of Boise meridian, containing 310.40 acres, which said quitclaim deed was recorded in the office of the County Recorder of Nez Perce County, Idaho, October 28th, 1907, in Book 86, of Deeds, at page 353. That Clarence W. Robnett and Jennie M. Robnett, his wife, by quitclaim deed duly executed and acknowledged, dated October 25th, 1907, in consideration of one dollar, quitclaimed to the Lewiston National Bank [3290—2960] lots 2, 3, 6 and 7, in section 30, and lots 5 and 8 and the east half of the southwest quarter of section 30, in township 38 north, of range 2 east, of Boise meridian, said quitclaim deed being recorded in the office of the Recorder of Nez Perce County, Idaho, October 28th, 1907, in Book 86 of Deeds, at page 352.

It is stipulated and agreed by and between the parties hereto in open court, that any and all instruments introduced in evidence at this hearing, or referred to in abstracts of such instruments read or copied into this record, were properly executed, and filed for record in the offices of the County Recorders of the counties where the land is situate, upon the date stated in each particular instrument or abstract thereof, and now appear of record in such offices, as shown by the abstracts of the material portions of such instruments referred to at any place in this record.

It is also stipulated and agreed that in all cases where abstracts of instruments are set forth in any part of this record, and a general description is given before the beginning of the deraignment of every title and entry, that all instruments set forth under such general descriptions respectively contain the same description as that which precedes the particular title or entry. In some instances, however, some of the instruments set forth in the chain of title include other property in addition to that which constitutes the particular entry or title being deraigned.

It is further stipulated and agreed that Pearl Washburn is absent from the State, and after due and diligent search and inquiry cannot be found.

Complainant rests. [3291—2961]

**[Testimony of William Dwyer, for Defendants
(Recalled in Sur-rebuttal).]**

WILLIAM DWYER, a witness heretofore called and duly sworn, being recalled in behalf of the defendants, in sur-rebuttal, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. Mr. Dwyer, you are one of the defendants, are you? A. Yes, sir.

Q. And you have heretofore testified in this case?

A. Yes, sir.

Q. I will ask you, Mr. Dwyer, if you heard the evidence of J. B. Lafferty this morning, relative to a conversation which he says he had with you in Orofino, concerning some land which he was then or had been cruising, and which was subsequently taken into

(Testimony of William Dwyer.)

the Forest Reserve?

A. Yes, sir. That was in 37-7.

Q. That was in 37-7? A. Yes, sir.

Q. Now, what conversation did you have with Mr. Lafferty at that time, if any?

A. Why, I had been in over the land and had found that there was a lot of these same homestead notices posted over it, and I was asking him if there was any additional notices, in a general way, and one thing and another about the land, and also that I thought that this company here that had this unsurveyed scrip would go in there and lay it right on top of these squatters or would-be squatters; and he said he couldn't give out any information. I told him I wasn't asking him for any information but just simply that the company or whoever laid that scrip would be glad to pay him for any information he might have in regard to nonresidents—if he didn't find anybody living on the land, etc.; that the notices were just posted up to shut somebody off.

Q. Now, did you tell him that you was representing that company? [3292—2962]

A. Oh, no. It would take unsurveyed scrip to lay there; and the only people who had unsurveyed scrip that could be laid there would be the Weiserhauser people.

Q. Did you ever suggest to him that you would pay him for any information?

A. No. No, I had all that information beforehand. I think that I was the one that suggested to Norman Jackson to send somebody in over that township there.

(Testimony of William Dwyer.)

Q. You heard his evidence concerning some land which he says he recommended be released, in 40-5 east, did you? A. Yes, sir.

Q. Do you know anything about the condition of that land? A. Yes, sir.

Q. Well, I think in 40-5 east—yes—and he also said that he recommended that those certain lands in 40-5 east which he named, wherein he gave the description of the lands, be retained and not released.

A. Well, I recommended that the whole entire north part of that township be relinquished back. It is absolutely worthless; it is no good.

Q. Did either Kester or Kettenbach or Kittie E. Dwyer have any land in this township?

A. Not an acre, that I know of.

Q. And did you hear his evidence concerning the Timber and Stone claim of J. B. West and Susie M. West? A. Yes.

Q. What do you know about those two claims?

A. They are no good—they have no value.

Q. Did you hear the evidence of Mr. Comerford?

A. Yes, sir.

Q. Relative to a conversation which he says he had with you [3293—2963] shortly after you returned from Portland, in September of this year?

A. Yes, sir.

Q. What conversation did you have with him, if any?

A. Why, we was talking generally about the Chapman testimony and about O'Bleness' testimony, and I told him that O'Bleness was mistaken; that I

(Testimony of William Dwyer.)

thought he was honest, but he was mistaken as to the conversation, and that Mr. Chapman had shown that he was mistaken somewhat; that his testimony was between \$50,000.00 and \$60,000.00, and I said that was cutting it in two, and I says, "If they will cut it in two again they will have it pretty near right."

Q. Now, did you ever tell Mr. Comerford that there was between \$50,000.00 and \$60,000.00 of those circle K. checks? A. No, sir.

Q. Did you hear the evidence of J. C. Jansen, relative to a millsite on Washington Creek, and the adaptability of Washington Creek for logging purposes and for mill purposes? A. Yes, sir.

Q. What do you know about the conditions of Washington Creek as to its adaptability for mill purposes, and what advantage if any it is to a milling company to have control of Washington Creek, especially where this land was acquired by the State?

A. Why, it is the best millsite in that part of the country, the best railroad ground; a railroad would necessarily have to go through there, also, if a railroad was building through there.

Q. Did you hear his evidence wherein he stated that he gave the numbers of the sections and the descriptions of the lands on the watersheds, the breaks of Washington Creek, that could have been acquired by the State? A. Yes, sir.

Q. What was the condition of the land there at that time? [3294—2965]

A. The State selected all the lands that was vacant at that time and also selected the homesteads and all

(Testimony of William Dwyer.)

the lands that those notices was posted on, and it was given out that the State was going to select them, and I believe did make a selection; in fact, I know they made an application for all the lands there, which was rejected, and afterwards the State didn't carry out its part of the programme, and the lands reverted back.

Q. I will ask you if you furnished the State Land Board, or Mr. Jackson, or whoever you reported to, minutes of these various tracts of land that Mr. Jansen described and said that the State could have acquired, and which he said was better land than that selected?

A. Yes, sir; they were furnished with all of Mr. Goldsmith's plats.

Q. Was it your fault or the fault of Mr. Goldsmith that the State didn't get those lands?

A. It certainly was not my fault. If I had been Selector for the State I would have taken it.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all.

Defendants rest.

The hearing and the further taking of testimony was thereupon closed. [3295—2966]

Errati.

The record should be corrected as follows:

On page 992 by adding to the description of Elizabeth Kettenbach's entry: The west half of the south-east quarter, wherever it goes in.

On page 1194, change the date of recording from July, 1906, to January, 1906. [3296—2967]

**[Certificate of Special Examiner Truitt to
Testimony, etc.]**

State of Idaho,
County of Nez Perce,—ss.

I hereby certify that the foregoing testimony, commencing at page 1, and continuing to and including page 2019, and commencing again at page 2307, and continuing to and including page, and the whole thereof, was duly taken before me at Lewiston, Idaho, and Spokane, Washington, beginning at Lewiston, Idaho, August 22d, 1910, at ten o'clock in the forenoon of said day; that the taking of said testimony was continued from day to day, as shown by the foregoing transcript, until the 24th day of October, 1910, at which date the hearing was closed; that at said hearing the complainant was represented by Hon. Peyton Gordon, Special Assistant to the Attorney General, and the said defendants by the counsel named in the transcript as appearing; and that before testifying each of the witnesses named in the transcript was duly sworn by me as by law required.

Witness my hand this 24th day of October, 1910.

(Signed.) **WARREN TRUITT,**
Special Examiner.

Filed Nov. 7, 1910. A. L. Richardson, Clerk.
[3297—2968]

*In the Circuit Court of the United States for District
of Idaho.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, and Others,

Defendants.

Order [Appointing Leo Longley Special Examiner.]

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that Leo Longley, of Los Angeles, California, be, and he is hereby appointed and constituted a Special Examiner of this Court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony therein of such witnesses as may be offered by either party at Los Angeles, California.

FRANK S. DIETRICH,

Judge.

United States of America,

District of Idaho,—ss.

I, A. L. Richardson, Clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of Order Appointing Examiner in Causes Nos. 388-406-407, United States vs. Wm. F. Kettenbach et al., has been by me compared with the original, and that it is a correct tran-

script therefrom, and of the whole of such original, as the same appears of record [3298] and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 29th day of August, 1910.

[Seal]

A. L. RICHARDSON,

Clerk.

[Endorsed]: Nos. 388-406-407. In the Circuit Court of the United States for the District of Idaho, United States of America vs. Wm. F. Kettenbach et al. Order Appointing Leo Longley, Los Angeles, Cal., Examiner. Filed July 15, 1910. A. L. Richardson, Clerk. Peyton Gordon, Spl. Asst. to the Atty. General, Sol. for Complainant.

Filed Sep. 20, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of a certified copy of an order made in the United States Circuit Court for the Southern District of Idaho, in the causes entitled The United States of America, Complainant, vs. William F. Kettenbach and Others, Defendants, Nos. 388-406 and 407, and certified to by the Clerk of said court and filed in my office on the 20th day of September, 1910, for the purpose of having subpoena issued for the witnesses whose testimony it was desired to take, and I further certify that said copy remains on file and of record in my office.

Attest my hand and the seal of the United States

Circuit Court for the Southern District of California,
this 17th day of October, A. D. 1910.

WM. M. VAN DYKE,
Clerk of the United States Circuit Court, for the
Southern District of California. [3299]

By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: Certified Copy of a Certified Copy of
an Order Appointing Leo Longley Special Ex-
aminer. [3300]

[Proceedings Had at Los Angeles, California, July
15, 1910.]

*In the Circuit Court of the United States for District
of Idaho.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, and Others,
Defendants.

Testimony taken on behalf of complainant, before
Leo Longley, Special Examiner, at Room 907 In-
ternational Bank Building, southwest corner of
Spring and Temple Streets, Los Angeles, California,
pursuant to an order made and entered herein as
of the 15th day of July, 1910, appointing said Leo
Longley as Special Examiner herein, a certified copy

of which said order is hereunto annexed.

Present: PEYTON GORDON, Esq., Appearing on
Behalf of Complainant, and GEORGE W.
TANNAHILL, Esq., Appearing on Behalf of
Defendants. [3301]

September 24, 1910, 1:30 o'clock P. M.

It is stipulated in open court by counsel for the
respective parties that the signatures of the wit-
nesses to their testimony herein, given on this day
and at this place in this hearing, are hereby speci-
fically waived.

[Testimony of Paul H. Waldman, for Complainant.]

PAUL H. WALDMAN, a witness called on be-
half of the complainant, being first duly cautioned
and solemnly sworn to testify the truth, the whole
truth, and nothing but the truth, deposed as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Paul H. Waldman?

A. Yes, sir.

Q. Where do you reside at the present time?

A. Fresno, California.

Q. And where did you reside in April and May,
1903? A. Lewiston, Idaho.

Q. And how long had you resided at Lewiston,
Idaho? A. About six years, I think.

Q. And what was your occupation there?

A. Merchant.

Q. Were you acquainted at that time with one of
the defendants, Clarence W. Robnett?

A. I was. [3302—1]

(Testimony of Paul H. Waldman.)

Q. Did you ever have any conversation with him relative to taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to his taking up a timber claim, upon the ground and for the reason that no entry of the witness is involved in either of these actions and his evidence is irrelevant, incompetent and immaterial.

A. Mr. Robnett had a conversation with me. He started the conversation.

Q. Well, where was that?

A. I don't recollect.

Q. It was at Lewiston, was it?

A. It was at Lewiston; yes.

Q. And how long before you filed on a timber claim?

A. I couldn't say now. Several weeks or several months after that.

Q. Several months before you filed on the claim?

A. Oh, that was several months before; yes. I filed several months after that.

Q. Now, state, as nearly as you can, what he said to you.

A. He asked me if I would care for a timber claim.

Q. What did you tell him?

A. I told him I hadn't considered the matter at all, but if there was a chance to get a good claim I would not object.

Q. Well, what else was said?

A. He told me he had several claims, one of which he thought might suit me, very good ones, and if I

(Testimony of Paul H. Waldman.)

cared to file he would locate me on one of them.

Q. Now, did he explain what you would have to do to locate?

A. Well, at the time this conversation took place was in the late winter; it was very cold, and a good deal of snow on the ground, and I objected to the difficulty of making a trip into the [3303—2] timber at that time of the year to view the timber. He said it wouldn't be necessary as practically all the timber that was being located was being located without the locators seeing the timber before making their filing.

Q. Do you mean the locators or the entrymen?

A. The entrymen; not locators,—being entered upon without seeing the timber.

Q. And was there any arrangement made for your wife at that time to locate on a timber claim?

A. There was, about that time. Whether it was during the same time or not I can't say.

Q. And were you to pay a location fee?

A. One hundred and fifty dollars per claim?

Q. And was the same explanation made relative to your wife not being able to view that timber claim, that it was unnecessary? A. The same thing.

Q. Did you finally agree to locate on a timber claim? A. I did.

Q. Were you to meet Mr. Robnett relative to having your papers made out, and filing papers, and so forth?

A. I don't recollect. He told me he was going

(Testimony of Paul H. Waldman.)

to have the papers drawn up ready for filing at the land office.

Q. Well, was any arrangement made for you to meet him anywhere?

A. Yes; in the hallway of the Lewiston National Bank just outside of the directors' door.

Q. Well, did you go to the directors' room of the bank?

A. I rapped at the door and he came to the door. I didn't go in. [3304—3]

Q. And did he come out of the directors' room?

A. Yes.

Q. Did he have the papers with him?

A. I really can't say whether we got the papers there or went out to Nickerson's office, but I think we went up there.

Q. Nickerson was a lawyer there, was he?

A. Yes; but I never had heard of the man prior to that.

Q. And you filed the papers that he gave you at that time or that Nickerson had there at that time?

A. Yes.

Q. You didn't have a description of the land upon which you were to file, did you?

A. None except that contained on the filing papers.

Q. You had never see the land at the time you filed? A. I had not.

Q. Now, you knew that you had to swear at the land office that you had seen this land personally or been over a subdivision of it, did you not?

(Testimony of Paul H. Waldman.)

Mr. TANNAHILL.—I object to that, as irrelevant, incompetent and immaterial. There was no law, and there is no law, requiring the witness to view the land before he files, and any rule of that kind made by the Department is of no effect.

A. That is what we were led to understand.

Q. (By Mr. GORDON.) That you would have to swear to it?

A. No; that it was not a law, but a rule of the United States land office.

Q. I know; but you read your papers over, that you filed, did you not?

A. I did not. I went right up to the land office and filed them.

Q. You swore to those papers, did you not?
[3305—4] A. Yes.

Q. And weren't you told, before you went there, that you would have to swear that you had been on the land?

A. Yes; but we were told it was immaterial, on account of it not being a law but a rule of the United States land office.

Q. Who told you that? A. Robnett.

Q. Did your wife file at the same time?

A. She did.

Q. Who else filed at the same time that you know of? A. My father and mother.

Q. What is your father's name?

A. C. L. Waldman.

Q. And your mother's name?

A. Amalie Waldman.

(Testimony of Paul H. Waldman.)

Q. Are you a relative to Mr. Lewis Dreckman?

A. He is my brother in law. He filed the same afternoon, but whether he was in the office at the same time I was I don't know.

Q. Was he in the office at the same time?

A. Yes, sir.

Q. Did Mr. Robert O. Waldman file at the same time, a brother of yours? A. Yes, sir.

Q. Did he take up a claim at the same time?

A. No; he did that some time before.

Q. So you went to the land office and filed your entry papers, your sworn statement, did you not?

A. Yes.

Q. Now, had you made any attempt to see the land prior to the time of filing these papers? [3306—5] A. I had not.

Q. Did you subsequently to that time go anywhere near seeing the land?

A. I did not; but I sent my brother in law and brother there to look up the claims after the breaking up winter.

Q. You didn't go yourself?

A. I didn't go; I could not get away.

Q. And did you ever make your proof on that timber claim?

A. I did not. They came back with the report that there was no timber on the land—just a few burnt sticks—and we relinquished it.

Q. They didn't get to see the land, did they?

A. They saw it.

(Testimony of Paul H. Waldman.)

Q. Who were your brother and brother in law who went?

A. Robert O. Waldman and Louis Dreckman.

Q. But you know that your brother in law never went to see that land, also?

A. To the best of my knowledge, I believe he went there and saw the land. I sent them there, my brother and my brother in law, and they got an equipment, camping equipment and everything else, to go up there and view the land, and they came back with the report it was no good; that so far as they saw it it was only burnt timber.

Q. Didn't they say that some of the timber-rollers, loggers, told them that?

A. They claimed they could see the land for miles around, and nothing but burnt timber for miles around there where this claim was located. They were supposed to be near a camp up there.

Q. And you relinquished your claim?

A. Yes, on the strength of that report. [3307—6]

Q. Did you have the money, at the time that you filed, to pay a location fee?

A. I did not. I did, but I didn't have it to spare. I had the money in the bank.

Q. And did you make any arrangement with Robnett as to how you were to pay the location fee?

A. I gave him a four months' note for the amount.

Q. Was that for your wife's claim also?

A. Yes, to cover both claims.

Q. How much was it? \$300?

A. I said about \$300.

Q. And did you give him that about the time you

(Testimony of Paul H. Waldman.)

made your filing?

A. I think it was the same day, or within a day or two thereafter.

Q. I show you a note, signed P. H. Waldman, dated May 5, 1903, payable to the order of C. W. Robnett, in four months, for the sum of \$300, and ask you if that is the note you signed and gave to Mr. Robnett? A. That is the note.

Mr. GORDON.—I offer that in evidence.

Mr. TANNAHILL.—Objected to, on the ground it is incompetent, irrelevant and immaterial.

(The note last referred to and offered in evidence was marked Complainant's Exhibit No. 1.)

Q. (By Mr. GORDON.) At the time you made the filing, you say you had \$150 in the bank which you could have paid your location fee with but you could not spare it? [3308—7]

A. Oh, I had an account of a thousand dollars there in the bank about all the time.

Q. Well, I say, you could not spare it?

A. I could not spare it; no.

Q. And where did you expect to get the money to make the proof? A. The sale of merchandise.

Q. Did you expect to give a note for that, also?

A. For what?

Q. To make your proof.

A. No; I expected to raise the money from the sale of merchandise during the business season.

Q. You gave that note in May, and when was your busy season?

A. The latter part of May, all of June and until

(Testimony of Paul H. Waldman.)

about the 4th of July.

Q. And you expected, in the meantime, to make enough money to make the \$300 that you could spare for yourself and your wife?

A. Well, I expected to sell about fifteen or twenty thousand dollars' worth of merchandise. That ought to give me some money.

Q. I do not wish to argue with you, but I am just asking you if you expected that? A. Yes; I did.

Q. Well, did you make the money in the meantime that you could have taken the claim with?

A. I could have done it.

Q. How long did you remain in business after you gave this note? A. Four years, I think.

Q. You never paid that note, did you? [3309—8] A. I did not.

Q. What did you do? Go back and demand the note and they gave it to you?

A. I went back with the report my brother and brother in law brought down from up there, to the effect that the claims were no good, and demanded my note back and he gave it to me within a day or two; said he didn't have it, it was in another bank, he would get it for me. Pardon me; I will correct that. He did not say it was in another bank; he said he didn't have the note, but he would get it for me and hand it to me within a day or two.

Q. And he did, and it was marked "paid," was it?

A. Yes.

Q. You paid no sum of money on that note at all?

A. Absolutely not a cent.

(Testimony of Paul H. Waldman.)

Q. Had you talked with your brother, R. O. Waldman, about your claim? A. When do you mean?

Q. At the time you took this up.

A. In what respect?

Q. In any respect.

A. I told him I was about to take up a claim.

Q. Did he tell you the arrangement he had made for getting the money to take up his claim?

A. We never discussed *that all*.

Q. He was a partner in the firm with you, was he?

A. Absolutely not at all.

Q. Was he working for you? A. Yes.

Q. Was Mr. Dreckman working for you at the same time? A. I believe so. [3310—9]

Q. Was your father in your employ also?

A. Not in my employ, but he spent his time there with me. He was not drawing a salary.

Q. Did he work there with you in the store?

A. He worked there whenever we had any work he could do—helped out some.

Q. Were you the owner of the store?

A. Well, the business was conducted in my name. I was supposed to be the owner.

Q. Were your brothers supposed to be owners?

A. I was the proprietor.

Q. To whom did you deliver your relinquishment?

A. To J.—

Q. — B. West? A. I can't say.

Q. Well, I mean did you deliver it to Robnett?

A. No.

Q. Who prepared the relinquishment for you?

(Testimony of Paul H. Waldman.)

A. I believe I did myself. I am not sure. The question was never asked before that I remember of.

Q. Did you have a blank form of relinquishment?

A. I believe we did.

Mr. GORDON.—That is all. [3311—10]

Cross-examination.

(By Mr. TANNAHILL.)

Q. You had no arrangement or understanding with Mr. Robnett, or Kester, or Kettenbach or Dwyer, or any of the defendants, that you would take this land up for them, did you?

A. Who are the other defendants? Well, it is immaterial. I had my arrangement made with Robnett altogether.

Q. You had no arrangements with any of the other defendants at all? A. With no one else.

Q. And you had no arrangements with Robnett that you would take the land up and deed it to him after you had acquired title, had you?

A. It never was mentioned or understood.

Q. Not understood at all?

A. Neither mentioned nor understood.

Q. And you were taking the land up for your own benefit?

A. I did, with the expectation of selling it, of course.

Q. But you had no arrangements to sell it to anyone before you signed up? A. To no one; no.

Q. And if the land had proved to be covered with valuable timber you would have taken it, paid for it with your own money, and then sold it to the best ad-

(Testimony of Paul H. Waldman.)

vantage, possibly? A. That is right.

Q. You were taking it up for your own exclusive use and benefit? A. I was.

Mr. TANNAHILL.—That is all. [3312—11]

[**Testimony of Louis Dreckman, for Complainant.**]

LOUIS DRECKMAN, a witness called on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Louis Dreckman?

A. Yes, sir.

Q. Where do you reside at present, Mr. Dreckman? A. Fresno, California.

Q. Where did you reside in May, 1903?

A. Lewiston, Idaho.

Q. And were you in the mercantile business in Lewiston at that time? A. Yes, sir.

Q. Did you know Clarence W. Robnett at that time? A. Yes, sir.

Q. Did you have a talk with him relative to taking up a timber claim for yourself? A. I had.

Q. And did you also talk with him relative to taking up a timber claim for your wife?

A. Correct; yes, sir.

Q. What was your wife's name? A. Elna.

Q. How long was this conversation before you located on the timber claim?

A. Well, I could not say exactly. Some time before. He was in the store there several times and

(Testimony of Louis Dreckman.)

talked to me about it.

Q. Was it a week or so before? [3313—12]

A. Oh, probably a month or two; maybe three months; maybe six months.

Q. Now, state what the conversation was, as nearly as you can remember.

Mr. TANNAHILL.—The defendants severally object to any evidence of this witness relative to his taking up a timber claim, upon the ground that it is irrelevant, incompetent and immaterial, no entry of the witness being involved in either of these actions.

Q. (By Mr. GORDON.) State what conversation you had with Mr. Robnett relative to taking up a timber claim.

A. The only thing he said was, he asked me to come and take up a timber claim. That is all.

Q. And was anything said about making a location on it? A. Yes, sir.

Q. Did you have the money at that time with which to pay a location fee? A. Yes, sir.

Q. Did you use your money to pay the location fee?

A. I would have had it, yes, because I got back the note and didn't have to pay it.

Q. Did you have money yourself at the time to pay a location fee? A. Yes.

Q. You didn't pay him this money, though, did you?

A. No; I didn't have to, because I gave a note for it.

Q. Then, you gave Mr. Robnett a note for a loca-

(Testimony of Louis Dreckman.)

tion fee? A. Yes, sir.

Q. How much was that?

A. I think it was \$150 for each claim; \$300 in all.

I think it was that. [3314—13]

Q. Did you give him that before you filed?

A. Yes, sir. Well, on the date I filed. I think it was, to the best of my knowledge.

Q. And when were you to repay that note?

A. I think it recited four months.

Q. Did you see the land that you were to file upon before you filed? A. No, sir.

Q. Why didn't you?

A. Because I was told it was unnecessary.

Q. Who told you that? A. Mr. Robnett.

Q. Now, what did he say about that?

Mr. TANNAHILL.—Object to that as irrelevant and incompetent and immaterial.

A. All I was told to do was to take a trip out of town to make it appear I had been on the land.

Q. (By Mr. GORDON.) And who told you that?

A. Mr. Robnett.

Q. And was anything said about your having to swear that you had been on the land when you went to the land office?

A. Why, I didn't know until that time that I went to the land office; I didn't know it before. I was told it was not necessary.

Q. Did Robnett talk with you about that?

A. Yes, sir.

Q. Do you say "Yes, sir"? A. Yes, sir.

Q. And who prepared your filing papers for you?

(Testimony of Louis Dreckman.)

A. I think it was Mr. Nickerson, if I am not mistaken. [3315—14]

Q. Now, how did you happen to go to Mr. Nickerson?

A. Why, Mr. Robnett sent me there for my papers.

Q. Did you have a description of the land or had Mr. Robnett furnished Mr. Nickerson with the information, with the knowledge?

A. Well, I don't know who furnished him the description. Mr. Nickerson had it made out when I came there. That is all I know.

Q. And where did you see Mr. Robnett the day you made your filing?

A. Why, he passed the store and told me to go up to Nickerson's office and get the papers.

Q. And you filed? A. Yes.

Q. Paid the filing fees? A. Yes, sir; I did.

Q. Did you ever make your proof? A. No, sir.

Q. Why not?

A. I relinquished it back to the government.

Q. Now, why did you do that?

A. Why, because I found out that the land was no good.

Q. How did you find out?

A. Why, I went up part way and saw.

Q. What did you go part way for?

A. I went up to go and find out, and I found out it was no good, and I went no further.

Q. Did you make that trip to make it appear regular when you came to make your final proof?

A. I relinquished it.

(Testimony of Louis Dreckman.)

Q. Well, you started a second time? [3316—15]

A. Yes.

Q. Now, how many days were you gone?

A. I think two or three days.

Q. And who were with you?

A. R. O. Waldman.

Q. And is he a brother in law of yours?

A. Yes, sir.

Q. Who else were with you?

A. A party by the name of Justice.

Q. Who else? A. That is all I know.

Q. Wasn't your father with you?

A. No, sir; I had no father.

Q. I mean was your father in law with you?

A. No, sir.

Q. Where did you go? A. Where?

Q. When you attempted to go to this land.

A. Kooskia.

Q. You didn't go to the land at all at any time?

A. No, sir.

Q. Are you sure your father, Mr. C. Louis Dreckman, was not with you at time you went on that excursion?

A. On the excursion he was there, but not the time I went up to the timber.

Q. And Mrs. Amalie Waldman was not with you?

A. Yes, on that trip.

Q. And your wife? A. Yes, sir.

Q. And Mrs. R. O. Waldman? A. No, sir.

Q. Hadn't they all taken claims at that time?
[3317—16] A. Not at the time I did.

(Testimony of Louis Dreckman.)

Q. You had taken the trips before you filed, didn't you? A. That trip was taken before we filed.

Q. At the time the loggers told you there was no timber on it?

A. No. After that I went and took a horseback trip out of some town up the line there. I forget now. And I took horses from there and rode out.

Q. Before you filed you went as far as Kooskia, did you? A. Before; yes.

Q. And what did you go up there for?

A. To make it appear that we were on the land. That is what we were told to do.

Q. And you didn't go any further than that?

A. Further than Kooskia?

Q. Yes.

A. Oh, we drove out of town a ways; yes.

Q. Well, I mean you didn't make any attempt to go upon the land at all? A. No.

Q. Do you know how far you were from the land?

A. No; I don't. I have not the least idea.

Q. Haven't an idea where the land is, do you?

A. I know, about, now, yes; after I made the trip up in the mountains the second time.

Q. The second time, how near the land did you get?

A. I could not say exactly.

Q. Ten miles?

A. I think it was inside of that. That is, at least, to the best of my knowledge and belief that I was told.

Q. And you went by yourself, at that time, so far as your [3318—17] relatives were concerned?

(Testimony of Louis Dreckman.)

A. No, my father in law, R. O., was with me.

Q. And he didn't go any nearer the land than you did? A. No, sir.

Q. And was that the occasion you were told that the land was not any good? A. Yes, sir.

Q. Now, do you remember when you went to the land office to file your sworn statement that you were required to swear that you had been upon the land?

Mr. TANNAHILL.—Object to that as irrelevant, incompetent and immaterial.

A. I don't know the exact date. I think it was sometime—

Q. (By Mr. GORDON.) I ain't asking you about the date. Read the question, please. (Last question read by the reporter.)

A. I found out when I went to the land office.

Q. Had you talked with Mr. Robnett about having to swear to that? A. No.

Q. He had just told you that it wouldn't be necessary for you to see the land?

A. It wouldn't be necessary to see the land.

Q. You relinquished your land?

A. I did, sir; yes, sir.

Q. How long before the time to make proof?

A. Well, I couldn't say exactly when it was. The exact date I don't recollect.

Q. Who prepared your relinquishment for you?

A. Why, at the land office. Mr. Garvey, I believe it was.

Q. Did you tell Mr. Robnett you were going to relinquish? A. I certainly did. [3319—18]

(Testimony of Louis Dreckman.)

Q. And did you get your note before you relinquished?

A. I got it back I think the same day I relinquished, or a few days after. I couldn't say exactly.

Q. Well, what was your conversation about getting your note back?

A. Well, I told him I didn't want the land, and he was willing to agree to give my note back.

Q. Had you talked with your brother in law, Robert O. Waldman about the conditions under which he was taking up his land?

A. The conditions which way?

Q. Any of them. When he was to get his location, and so forth. A. No, sir.

Q. He had already taken his land up when you—

A. He took it up about the same time I did.

Q. You gave a note for your location fee for yourself and your wife? A. Yes, sir.

Q. Were you to give a note also for the final proof? A. No, sir.

Q. Did your wife relinquish her claim also?

A. Yes.

Q. She never made proof? A. No, sir.

Q. She never went upon the land, either?

A. No, sir.

Mr. GORDON.—That is all. [3320—19]

Cross-examination.

(By Mr. TANNAHILL.)

Q. You had no arrangements with Robnett, or anyone else, to take the land up for their benefit, had you? A. No, sir.

(Testimony of Louis Dreckman.)

Q. You had no agreement or understanding, either directly or indirectly, that you would deed the land to any of the defendants, or anyone else?

A. Not at all, sir.

Q. You were taking it up for your own exclusive use and benefit? A. Yes, sir.

Q. And if you had found the land was covered with valuable timber you would have taken it up and paid for it with your own money and disposed of it for the best price you could?

A. I certainly should.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. You were in the clothing business, were you not? A. Yes, sir.

Q. And were employed by Mr. Paul Waldman?

A. I was at that time, yes, sir; but later on I went into business for myself.

Q. You are not a timber man?

A. No, sir; I am not.

Q. You could not cruise timber yourself and tell how much was on it, could you?

A. I could not tell whether there was ten thousand feet or a million. [3321—20]

(The note referred to herein is marked Complainant's Exhibit "P.H.W. No. 1.")

Mr. GORDON.—That is all.

Whereupon the further taking of these depositions was adjourned until Monday, September 26th, 1910, at 10 o'clock A. M., at the same place. [3322—21]

Monday, September 26th, 1910, 10 o'clock A. M.

The further taking of these depositions was now resumed, pursuant to the adjournment. Present, Peyton Gordon, Esq., appearing as counsel for the complainant; George W. Tannahill, Esq., appearing as counsel for the defendants.

**[Testimony of Robert O. Waldman, for
Complainant.]**

ROBERT O. WALDMAN, a witness called on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Robert O. Waldman? A. Yes.

Q. Where do you reside at the present time, Mr. Waldman? A. In Berkeley.

Q. California? A. Berkeley, California; yes.

Q. Did you at one time reside in Lewiston, Idaho?

A. Yes, sir.

Q. Did you reside there in March, 1903?

A. I did.

Q. And how long prior to that time had you lived at Lewiston, Idaho?

A. Since the 7th of February, 1898.

Q. Did you know one Clarence W. Robnett, in March, 1903? A. I did.

Q. I will ask you whether or not you had any dealings with him relative to taking up a timber claim in the United States land [3323—22] office at

(Testimony of Robert O. Waldman.)

Lewiston, Idaho?

Mr. TANNAHILL.—The defendants, severally, object to any evidence of the witness relative to his taking up a timber claim, in so far as it relates to bills number three hundred and eighty-eight and four hundred and seven, upon the ground that the answer of the witness is not involved in either of these actions, and the evidence is irrelevant, incompetent and immaterial.

A. I did.

Mr. GORDON.—Now, state what the conversation was—the first conversation you had with him.

A. Mr. Robnett approached me in regard to a timber claim, stating that he could locate me on a claim either for a consideration of \$100 which I was to pay him and furnish the money myself, and sell to whomever I wanted or I could accept \$400 for my right and deed the claim over to him.

Q. And was anything said about the financial part of that proposition?

A. He would furnish the money for the filing and proving up and of the expenses of my trip going up to look at them.

Q. The expenses of going up to locate on the claim? A. Yes, to locate on the claim.

Q. Now, do you remember where this conversation was that you have related?

A. It was some place in the Lewiston National Bank about two weeks prior to my filing.

Q. And you filed March the 6th, 1903?

A. I believe that was the date; yes.

(Testimony of Robert O. Waldman.)

Q. Now, what did you say at that time?

A. I told him that I should much prefer to take it up on my own hook and furnish the money myself, as I felt able to do so at that time, and it was agreed that he was to look around for a claim for me. And then, in the course of a week, matters turned [3324—23] up that made it impossible for me to use my own money, and I told him so.

Q. Well, now, where did you tell him? Where did you see him?

A. I went to the bank again to see him.

Q. What part of the bank?

A. At his window in the bank, at the bookkeeper's window; and I told him there, and then he told me "all right," that he would let me know within a day or so just when I was to leave, and he would furnish the proving up fees and pay the \$400 for my right as soon as I deeded it over to him.

Q. Now, this second conversation you have just related—that was prior to your filing any paper at all in the land office, was it not?

A. Yes; that was about, I should judge, three or four days before I filed.

Q. And this was the conversation had with Mr. Robnett at the Lewiston National Bank at his window? A. Yes, sir.

Q. Now, was anything said about who was to pay the filing fee in that conversation?

A. He said he would pay the filing of it, and my expenses up to visit the claim and all the fees contingent to the filing.

(Testimony of Robert O. Waldman.)

Q. And anything said about final proof?

A. And he would also pay the final proof, yes; he would furnish the money for paying the final proof.

Q. And what were you to do?

A. I was to deed the claim over to him and he pay the \$400 for my right.

Q. And did you say anything to him at that time?

A. I told him I would accept his proposition.

[3325—24]

Q. Did you go to view the claim after that?

A. He furnished me with directions to get there, and to the best of my knowledge I visited the claim on horseback.

Q. You left Lewiston, anyhow, with that in view?

A. Yes; I left Lewiston with that end in view.

Q. And who paid the expenses of that excursion?

A. Mr. Robnett.

Q. And did he give you the money before you started?

A. Yes; he gave me fifteen dollars, and he said if that would not carry me through to let him know. And I only used a part of it and I returned him the balance.

Q. Then, after you had been up in the direction of the claim, or where you thought the claim was, did you see Mr. Robnett again before you filed?

A. I saw him in the bank again before I filed.

Q. What part of the bank?

A. At the same window.

Q. And what was the discussion at that time?

A. Well, he gave me a memorandum paper with the technical description of the property which I

(Testimony of Robert O. Waldman.)

was to hand in at the Register's window when he asked me for the description; and he told me also, of course, that I was to state that there was no prior agreement to sell, and coached me on certain other questions which I have since forgotten, but, at any rate, so that I was to answer "yes" or "no" to the questions, according to the requirements of the application.

Q. And you went to the land office, and you say he had given you a memorandum to take there to have your papers prepared?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Yes.

Q. (By Mr. GORDON.) I show you timber and stone land statement, signed "Robert O. Waldman," and dated March 6th, 1903, and ask [3326—25] you whether or not you signed that paper and filed it in the land office at Lewiston, Idaho, about the date it bears? A. I did.

Q. I show you the nonmineral affidavit, signed "Robert O. Waldman," bearing the same date, and ask you if you signed that paper and filed it at the United States land office at Lewiston, Idaho, about the date it bears? A. I did.

Q. I show you the testimony of Robert O. Waldman, taken at final proof, May 25th, 1903, and ask you if you signed that paper.

A. Yes; that is my signature.

Q. I will show you the cross-examination, taken at final proof, of Robert O. Waldman, the same

(Testimony of Robert O. Waldman.)

date, and ask you if you signed that paper?

A. I did; yes, sir.

Q. Where did you get the money you paid in the land office for a filing fee and advertising, at the time you filed the sworn statement?

A. I got it from Mr. Robnett.

Q. And when did you get that?

A. On the morning—as I went up to the office to file, before going up.

Q. And do you remember how much you paid into the land office at that time?

A. I am not sure, but I think it was something like eight dollars. I may be mistaken.

Q. And then, some days later, you made your final proof? A. Yes; about two months later.

Q. And did you see Mr. Robnett in the meantime?

A. Yes; Mr. Robnett notified me as to the time that I was to make final proof, and to be prepared, and he asked me to stop in the bank before I went up.

Q. And did you go to the bank the day you made your final [3327—26] proof?

A. Yes; I went into the bank to see him, and we went into the directors' room, and he paid me the—\$400, and I think there was something over, a fraction over that, necessary to file, to make the final proof.

Q. And did you go over any questions that you were to answer at the land office at that time?

A. Well, the two witnesses were there, and between the four of us we went over the questions

(Testimony of Robert O. Waldman.)

which I was to answer, and how I was to answer them, stating that I was to—

Mr. TANNAHILL.—We object to any evidence of the witness relative to his final proof or any answers that he was to make at final proof, upon the ground that it is irrelevant, incompetent and immaterial; and move to strike out the answer of the witness just given, in relation to any statement as to what he was to swear to upon the making of final proof.

Q. (By Mr. GORDON.) Continue. Proceed with your answer.

A. I was told what to say and what answer to make to the questions as they were put to me, stating that above all things, I must state that there was no previous agreement to sell, and that on the way down I should stop in at the bank and I should sign a deed to Mr. Robnett.

Q. Now, did Mr. Robnett have a copy of the final proof papers at that time?

A. That, I don't remember.

Q. Was anything said at that time as to what you were to say relative to where you received the money with which you made the proof?

A. Yes; I was to say that I earned it; or out of my earnings; or something of that sort.

Q. And who told you to say that?

A. Mr. Robnett. [3328—27]

Q. And you went directly from the bank upstairs to the land office, did you? A. I did; yes.

Q. And did you make final proof with the money Mr. Robnett had given you? A. Yes, sir.

(Testimony of Robert O. Waldman.)

Q. Do you remember who your witnesses were that were in the directors' room at the time you were there?

Mr. TANNAHILL.—I object to that, on the ground that the record is the best evidence.

A. No.

Q. (By Mr. GORDON.) I say, who were in the directors' room. Were they there? A. Yes.

Q. Who were they, if you remember?

A. Ed. Knight and Will Benton.

Q. And they were there during the conversation you had with Mr. Robnett, were they?

A. I don't know that Will Benton was standing close by, but Ed. Knight—the conversation was between the three of us, Robnett, Ed. Knight and myself.

Q. Do you remember whether or not this question was asked you on final proof: "Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?" and did you answer it, "I earned it by clerking three years"?

A. Yes, sir; I remember the question.

Q. And you remember making that answer?

A. Yes; I remember making that answer.

Q. That was not exactly true, was it?

A. Well, no; not exactly. I was told to give the answer. [3329—28]

Q. And you paid the fee into the land office that was necessary to make the final proof? A. I did.

Q. And you said something was said before you

(Testimony of Robert O. Waldman.)

went to the land office about making a deed. Now, what was that?

A. I was to stop in at the bank on my way down and give Mr. Robnett a deed for it and they would pay me some money on account and the balance as soon as the claim was sold.

Q. And did you stop in at the bank on your way down to the land office? A. I did; yes.

Q. Did you name your witnesses for final proof?

A. Why, I was told whom to name and who would be my witnesses.

Q. Who told you that? A. Mr. Robnett.

Q. And was that on the memorandum that you had when you went to the land office the first time?

A. I don't remember that.

Q. And to whom did you make the deed the day that you made your final proof?

A. To Clarence W. Robnett.

Q. And did you receive any money that day?

A. I am not certain as to the amount. I believe I received fifty dollars then, or \$150; I don't just remember which. I received an amount then, and two weeks later I received enough to make the two hundred; that is, I received either the \$50 first or *vice versa*. I don't remember which.

Q. And when did you get any more money than that?

A. I got \$150 more. Then, I gave an order on a lumbering concern there on Mr. Robnett for a bill that they had against me, and they accepted it.

(Testimony of Robert O. Waldman.)

Q. And how much did you get in all? [3330—29] A. \$350.

Q. Then, you didn't get the four hundred?

A. No; I didn't get that. I was leaving town and I suggested that if he would settle the matter then, accept this order, I would discount the \$50 in order to get it straightened out.

Q. I will ask you whether or not the whole matter turned out as you understood it originally in your conversation with Mr. Robnett? A. Oh, yes.

Q. You carried out your part of the agreement and he carried out his? A. Yes.

Q. Are you related to Paul H. Waldman?

A. He is my brother.

Q. And are you related to Mr. Dreckman?

A. He is my brother in law.

Q. And did they take up claims?

A. They filed on claims.

Q. And what others of your family filed on claims?

A. My mother and my father.

Q. What is your mother's name?

A. Amalie Waldman.

Q. And what is your father's name?

A. Louis Waldman.

Q. And who else of your family?

A. And Clara Waldman, my brother's wife, Alma Dreckman, my sister, and my wife, Maud Waldman.

Q. And did they take up claims at the instance of Mr. Robnett? A. Yes. [3331—30]

Mr. GORDON.—I think these papers that have been identified have been offered in evidence as Com-

(Testimony of Robert O. Waldman.)

plainant's Exhibit 54. I shall offer them again, however. We offer the timber and stone land sworn statement of Robert O. Waldman, and the nonmineral affidavit of Robert O. Waldman, the notice for publication of Robert O. Waldman, the testimony of Robert O. Waldman given at final proof and the cross-examination of Robert O. Waldman at final proof, all of which papers have been identified by the witness; the testimony of the witnesses at the final proof and the cross-examination of them, the receiver's receipt and register's certificate dated May 25, 1903, the certified copy of the permit issued to Robert O. Waldman and dated August 3d, 1904, all relating to the entry of lots, 2, 3, 6 and 7, in section 30, township 38 north, of range 2 east of Boise meridian;

Also offer a certified copy of deed, dated May 26th, 1903, made by and between Robert O. Waldman and Maude M., his wife, conveying to Clarence W. Robnett lots, 2, 3, 6 and 7, section 30, township 38 north of range 2 east, of Boise meridian, executed and acknowledged before John E. Nickerson, Notary Public, of Nez Perce County, Idaho, May 26th, 1903, and recorded in the office of the Recorder of Shoshone County on the 2d of October, 1903.

Mr. TANNAHILL.—The defendants severally, without any further identification of the papers, shall object to the admission of any document in evidence in support of bills No. 338 or 407, upon the ground and for the reason that the entry of any witnesses is not involved in either of these actions; they are irrelevant and immaterial; and the defendants further

(Testimony of Robert O. Waldman.)

object to the admission of the final proof papers in evidence in support of either of the actions, upon the ground that they are irrelevant, incompetent and immaterial. [3332—31]

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Waldman you remember of testifying as a witness in the case of United States against Kester, Kettenbach and Dwyer, at Moscow, in the month of May, 1907, do you? A. I do; yes, sir.

Q. Do you remember that at that trial you did not testify that you was to receive so much money, or any amount of money, for your right?

A. I don't remember that; no.

Q. How does it come that you are testifying now that you were to receive so much money for your right?

Mr. GORDON.—I beg your pardon, but he did testify to that, page 1300 of the record.

Q. (By Mr. TANNAHILL.) I will ask you if you didn't testify as follows: "Q. The first time, what was the first word said between you and Robnett regarding the taking up of the timber claim? A. He said he would give me the benefit of his two locators if I wanted to furnish the money myself, and then I could sell to whoever I pleased. In that event, I was to pay the location fee. But if I could not get the money myself he would try to get it for me, and in that event of course I would get a certain amount over and above the proving-up cost, and there would

(Testimony of Robert O. Waldman.)

be no location fee then.” Now, did you so testify in that trial? A. I did.

Q. And is that the conversation that occurred between you?

A. That is the first conversation, yes, relative to my choice of propositions.

Q. Now, did you not also testify, on cross-examination, [3333—32] after I had cross-examined you at length and tried to get a statement of all that was said: “Q. Not what you were to do, but give the language used by you.”

Mr. GORDON.—That question you just asked him was also on cross-examination.

Mr. TANNAHILL.—I know it was.

Q. Now, this is page 1310-11: “A. He said I should try to get the money myself and pay him a location fee and sell to whoever I could, and if I couldn’t do that, he would probably—he would try to raise the money for me.” Did you also testify to that? A. I did.

Q. That was true, was it?

A. That was true at the time, yes.

Q. “Q. That was what Robnett said? A. That is as near as I can remember it. Q. Now, can’t you give us his exact language? Give it as near as you can. A. Not any better than that. Q. What else was said? A. I agreed to try to get the money, to try to raise the money myself, and let him know within a certain length of time, in a matter of two or three days. But if I could not get it, he was to do his part, that is, he would try to get the money for

(Testimony of Robert O. Waldman.)

me." Now, is that right?

A. That is correct; yes, sir.

Q. Now, is it not also a fact that he was to sell the land for you after you acquired title to it?

A. No; it was not. He was to—it was agreed then, when I told him that I could not get the money, that I didn't have the money that I expected and I could not get it, that he would pay me this definite amount for my claim and I would get the money when he sold it.

Q. Yes. Well, now, was not you to place a deed in escrow [3334—33] for the purpose of securing that money that you got from Robnett?

A. I believe the deed was placed in escrow, as near as I can remember it; yes.

Q. And that was pending Robnett's efforts to make a sale of it, wasn't it?

A. That I don't know. There was very little said as to the why and wherefore these things were done. Now, all I was told was as to what I was to get, and after that it was practically taken out of my hands and there was nothing else said about it.

Q. You understood Robnett was to sell it to someone else, didn't you?

A. That is what he told me, that I could not get what he had promised me until after he had sold it. That was what he told me.

Q. And it was the understanding he was to sell it, wasn't it?

A. Why, yes; he said it was not a very good claim, but he said, "I expect to make a pretty good turn out

(Testimony of Robert O. Waldman.)

of that very soon.”

Q. Now, did you not also testify, page 1313: “I notified Mr. Robnett I could not raise the money, and he said he could fix it all right for me, and in that event I would give him a deed in escrow for the property as soon as I proved up on it and as soon as the claim was sold, I would receive my \$400, and I agreed to it.” You so testified, did you not? A. I did.

Q. Now, then, there was no fixed price that he was to sell the claim for, was there?

A. No price that he was to sell the claim for, but there [3335—34] was a fixed price as to what I was to get.

Q. You didn’t get that, though, did you?

A. I didn’t get it because I chose to waive \$50 of it in order to get a prompt settlement because I was leaving town.

Q. Then the arrangement didn’t turn out as you expected it, did it?

A. Well, I was satisfied.

Q. Well, answer my question. Then, the arrangement didn’t turn out as you expected it, did it?

A. Not exactly, no.

Q. Then, you were mistaken when you told Mr. Gordon that the arrangement turned out just as you expected it? A. Well, possibly; yes.

Q. ‘M-h’-m. Well, now, then, it was understood that Robnett was to sell the claim for you, wasn’t it?

A. That was what Mr. Robnett said to me; yes.

Q. And that deed that you gave him was simply to be placed in escrow to secure the money that he was

(Testimony of Robert O. Waldman.)

advancing you, wasn't it?

A. I was not there when the deed was turned over. It may have been turned over to someone else or to him immediately. There was no arrangement for placing it in escrow made in my presence.

Q. Well, you made that arrangement, did you not?

A. No; I did not. I signed the deed and handed it over to him.

Q. Well, how do you explain your evidence now with the evidence you gave at the former trial?

A. I simply took his word for it that it would be placed in escrow.

Q. Well, didn't you testify as I have heretofore said, that you would give him a deed in escrow for the property as soon as [3336—35] you proved up?

A. If that statement was made, I presume it was so. I don't remember.

Q. "I notified Robnett I could not raise money, and he said he could raise it all right for me, and in that event I would give him a deed in escrow for the property as soon as I proved up on it, and as soon as the claim was sold I would receive my \$400, and I agreed to it." Now, didn't you so testify?

A. I did; yes, sir.

Q. Well, that was true, wasn't it?

A. As near as I can remember it. So far as that matter of escrow is concerned, I don't remember definitely just how that was arranged; I couldn't swear one way or the other now.

Q. Well, that has been three years ago. Your memory was more fresh on it at that time than it is

(Testimony of Robert O. Waldman.)

now, was it not? A. Oh, yes; undoubtedly.

Q. Then, as you testified at that time must be true, must it not?

A. Well, it may be that I have forgotten regarding the matter of the escrow now. I would not say how it came about. I know, though, it was understood that the deed was to be in escrow. I can remember that now. I didn't at first, but I remember now that was the agreement.

Q. Then, you had no agreement to sell it to Robnett, did you?

A. Why, the deed was to be given to him right then and there and I was to get my money for it.

Q. No; that is in conflict with the evidence you gave at the former trial.

Mr. GORDON.—I object to that, on the ground it is an argument with the witness, and not proper cross-examination. [3337—36]

Q. (By Mr. TANNAHILL.) You have stated that you was to give him a deed in escrow and as soon as the claim was sold you would get your \$400.

A. Well, I was not to have any access to that deed, as I understood it, outside. If I had a chance to sell it to anyone else, there was no question of my being able to do anything further with the deed. As far as I understood it, the deed had passed out of my hands. Under an ordinary escrow agreement either party has access to it in the event of the other party failing to carry out the other part of the agreement. Is not that true?

Q. Well, I am not testifying; but then the fact of

(Testimony of Robert O. Waldman.)

the matter was that your arrangement with Robnett was that he was to sell this land for you to someone else? A. No; he was not to sell it for me.

Q. Well, you said that when the land was sold you was to receive your money?

A. He said he could not give me my money until he could sell it, and he said his money was tied up to such an extent that he could not give me my money until he would sell it and realize the amount, because he said he was short of money and I would have to wait until such a time as he sold the claim before I could get the \$400.

Q. And you placed the deed in escrow to secure the money that had been advanced to you at that time, didn't you? A. Yes.

Q. That was your arrangement with Mr. Robnett?
A. Yes.

Q. Now, your first arrangement with Mr. Robnett was that you would take the claim up, and pay your own money for it, was it?

A. That was the first arrangement; yes.

Q. Now, how long did that arrangement last? That is, about [3338—37] when was it that arrangement was made?

A. Oh, that was the first. I would judge about a week or two weeks—I don't know exactly when—before I filed.

Q. Before you filed? A. Before I filed.

Q. And then, how long was it after that before you had another conversation with Mr. Robnett?

A. Well, as soon as I found out that I would not

(Testimony of Robert O. Waldman.)

have the money available.

Q. Well, when did you find that out?

A. The chances are, a matter of four or five days later.

Q. How did you come to find it out then?

A. The contractor who was building my house jumped the job and left me in a pretty bad way financially, and I was unable to use the money I had figured on using.

Q. Now, Mr. Robnett, when you went to him, told you that he would try to get the money for you, didn't he?

A. He said that; but that was in the earlier conversation.

Q. At what time?

A. In the earlier conversation.

Q. Well, when was it in relation—

A. That was when we first spoke about the matter. He said I could take my choice of either proposition, either pay it myself and pay him a hundred dollars for location fee, or he would try and get it for me.

Q. Then, when you found out you could not get the money, you went to Robnett and told him you could not get the money, didn't you? A. Yes, sir.

Q. What was said then?

A. He said he could locate me on a claim that was not very [3339—38] good, and, of course, as to the result I could not expect to get as much that way as if I would wait until he could locate me on a better claim. So he agreed to pay me \$400 for my claim, if I would accept it, and I accepted it right there and then.

(Testimony of Robert O. Waldman.)

Q. How long was that after you had first talked with him about it?

A. Oh, I should judge within a week.

Q. Now, you didn't testify to that in the other trial, did you? A. I don't remember.

Q. You have thought of that since, have you not?

A. How is that?

Q. You have thought of that since, have you not?

A. Oh, no. I certainly testified to it—maybe not in those same words, but to that same effect—in the former testimony.

Q. Well, now, then, when was it you had another talk with Mr. Robnett?

A. That was the morning that I went up to file on the claim, went up to visit the claim.

Q. Now, I am reading from page 1306 of Case 1605, in which you testify as follows: "And you heard from Mr. Robnett that he could get you the money?"

I will read back a little further: "I notified Mr. Robnett I would not be able to provide the money myself and he said he would try to fix it for me. Q. He

stated he would try to get the money for you? A. He said he would try to get the money for me.

Q. Had the matter of acquiring a timber claim—or had you talked it over with anyone before you talked it over with Mr. Robnett? A. I hadn't made any

attempt to get a timber claim, if that is what you mean. Q. Had you talked it over with anyone be-

fore you talked it over with Mr. Robnett? A. I don't remember anyone outside of my folks. Q.

But you were considerably [3340—39] interested

(Testimony of Robert O. Waldman.)

in the timber business, were you not? A. Yes, sir.

Q. And were anxious to get you a timber claim?

A. Yes, sir. Q. Now, what did you do after Robnett told you he thought he could get the money for you?

A. I waited until I heard from him. Q. And you

heard from Mr. Robnett that he could get you the money? A. Yes, sir. Q. And there was an ar-

rangement that a deed was to be placed in escrow to secure this money, was there not? A. Yes, sir. And

to secure myself, so that—against the amount I was to receive. Q. And to secure Mr. Robnett against

the amount he had advanced to you? A. I presume that was it.” You so testified, did you not?

A. I did.

Q. And that evidence is true, isn’t it?

A. To the best of my knowledge and belief, yes.

Q. Then, the arrangement was that that was to secure the amount that Mr. Robnett had advanced you?

A. Well, that was the—if an inference is made, it evidently depends exactly on how the questions were put at that time.

Q. How is that?

A. I say, now, if I say yes, certainly—now. if he asked me regarding the escrow, and I stated that that was the understanding, that is, it was understood although not discussed, of course you will naturally infer that an escrow agreement is mutual.

Q. Certainly.

A. And, of course, if I infer that from the question, the way it was put to me, I would have to answer

(Testimony of Robert O. Waldman.)

“Yes,” wouldn’t I?

Q. Well, I suppose you would, if you told the truth.

A. And if the question was asked me now I would not have to answer the same way if you left off part of the question?

Q. I want the truth, and that is all.

A. Well, the deed was to be left in escrow, as I remember [3341—40] it now. Yes.

Q. That was your understanding, and, so far as you know, Mr. Robnett’s understanding?

A. I presume so, yes.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. This second conversation that you had in which you say that the contractor had jumped his job—when was that relative to the time that you made your original filing?

A. Oh, the whole thing happened within a week or ten days. It was prior.

Q. It was prior? A. Yes.

Recross-examination.

(By Mr. TANNAHILL.)

Q. You never had any conversation with George H. Kester or William F. Kettenbach or William Dwyer regarding this matter? A. No, sir.

Q. Or with any officer of the Lewiston National Bank?

A. I don’t suppose Mr. Robnett is an officer.

Q. No. A. No; none of the officers.

Q. And you had no arrangement to sell your land

(Testimony of Robert D. Waldman.)

to the Lewiston National Bank before you made your proof? A. No; none whatever.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. [3342—41]

[Report of Special Examiner Longley to Testimony, etc.]

In the Circuit Court of the United States for the District of Idaho.

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH AND OTHERS,
Defendants.

To the Honorable Judge of the Circuit Court of the United States in and for said District:

Pursuant to the order of reference made and entered in the above-entitled cause upon the 15th day of July, 1910, whereby it was ordered that the undersigned, as Special Examiner in Chancery, should take the testimony in said cause and report the same to the court, the said Special Examiner does now report as follows:

That the complainant appeared at my office, room 907 International Bank Building, Southwest corner of Spring and Temple streets, Los Angeles, California, on the 24th day of September, 1910, by Peyton Gordon, Esq., and the defendants appeared by their

solicitor, George W. Tannahill, Esq., and thereupon the complainant called as witnesses upon its behalf Paul H. Waldman, Louis Dreckman and Robert O. Waldman, who were duly sworn and examined in said cause; that the depositions of said witnesses were reduced to writing by me, and by stipulation and agreement of the parties, contained in the record hereunto attached, the reading, correcting and signing of the depositions by said witnesses were waived.

Complainant also introduced in evidence exhibits numbered [3343—42] No. 1, "P.H.W. No. 1, 54," all of which exhibits were duly marked by the Special Examiner.

And the said record accompanying this report contains all of the evidence and exhibits introduced in said cause by the respective parties, together with the stipulations entered into, before me as Special Examiner; all of which are now herewith returned to the court.

[Seal]

LEO LONGLEY,

Special Examiner in Chancery.

Dated October 28, 1910. [3344—43]

[Endorsed]: No. 388. In the Circuit Court of the United States for District of Idaho. The United States of America, Plaintiff, vs. William F. Kettenbach and Others, Defendants. In Equity Nos. 388, 406 and 407. Filed Nov. 7, 1910. A. L. Richardson, Clerk. [3345]

Filed June 24, 1911. A. L. Richardson, Clerk.
[3346]

[Proceedings Had June 22, 1911, Re Motion to
Reopen Cases, etc.]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

Be it remembered that this matter came on for hearing before the Honorable FRANK S. DIETRICH, United States District Judge for the District of Idaho, this 22d day of June, 1911, at 3 o'clock P. M. of said day, and the following proceedings were had, to wit:

Mr. GORDON.—On April 20th, 1911, I filed, on behalf of the Government, a motion and notice of motion in the cases of United States of America vs. William F. Kettenbach and Others, numbers 388, 406 and 407, moving the Court to reopen the cases for the purpose of taking newly discovered evidence on behalf of the Complainant, the matter set out in the affidavit attached to the motion being the evidence intended to be offered, and evidence relating and incident thereto. Besides the matter set forth in the affidavit, in order that there might not be any misunderstanding as to what is intended by evidence relating and incident thereto, I present to the Court a paper headed "Harvey J. Steffey's Loans," and

that paper, together with the deposit slip mentioned in the affidavit in support of the motion, are the matters in relation to which we desire to offer newly discovered evidence. I now move the Court for an order reopening the cases for the purpose of introducing the evidence referred to at this time.
[3347—2969]

Mr. TANNAHILL.—The defendants object to the application and motion for the order, upon the ground and for the reason that the evidence referred to, if offered, would be irrelevant and immaterial, and upon the further ground that no notice of the opening of the case for the purpose of introducing the evidence in relation to the Harvey J. Steffey loans was ever served, and upon the further ground that it requires the taking of additional testimony and the examination of additional witnesses and creating additional expense on the part of the defendants.

The COURT.—The motion will be allowed, upon the condition that in reopening the case for the purpose stated the final submission of the case will not be delayed and no additional expense will, by reason thereof, be entailed upon the defendants.

Mr. TANNAHILL.—Allow us an exception to the ruling of the Court.

The COURT.—Yes.

Thereafter, when counsel returned into court, the following proceedings were had:

The COURT.—Mr. Tannahill, have you determined whether or not the evidence made necessary by the reopening of the case can be taken without delay and without additional expense to you?

MR. TANNAHILL.—I think we can, with the possible exception of the witnesses Evans and Whitney; and Mr. Gordon has agreed to stipulate that the witnesses Evans and Whitney would testify, if personally present, that they were employed by William Dwyer, one of the defendants, for the purpose of cruising land and furnishing certain minutes of land, and that they came to Lewiston in the evening and left on the early morning train of April 25th, and that one of them received \$50.00 and the other one received \$46.00, or each one of them received \$48.00, it being also agreed that either party might call the witnesses Whitney and Evans to [3348—2970] testify touching this same matter, in case their presence can be procured prior to the final argument of the case, and under these conditions we can take the evidence today, and without additional expense.

THE COURT.—Upon this statement of counsel, the case will be reopened for the reception of the testimony referred to in the Government's motion.

MR. TANNAHILL.—Allow us an exception.

THE COURT.—Upon motion of counsel for the defendants, there being no objection thereto, additional time, until the 25th of July, 1911, is given to the defendants in which to file and serve their briefs. [3349—2971]

This cause came on to be heard this 22d day of June, 1911, at four o'clock P. M., for the purpose of taking further testimony pursuant to order of court this day made reopening the case, on motion of the complainant, the complainant appearing by Peyton

Gordon, and the defendants William F. Kettenbach and William Dwyer being personally present, and the defendants also being represented by their attorney George W. Tannahill. Whereupon it was stipulated and agreed by and between the respective parties that the evidence be taken before C. W. McClain, and the appointment of a special examiner being expressly waived, the witnesses having heretofore been sworn and testified in the cause.

And be it further remembered that then and there the following proceedings were had:

Mr. GORDON.—The complainant offers in evidence the following entries from the books and records of the Lewiston National Bank:

Note of Harvey J. Steffey, dated January 22, 1906, No. 15,263, in the sum of \$500.00, payable to the Lewiston National Bank in ninety days, with interest at 10 per cent per annum. That the amount of said note was not credited to Steffey's account. That the same was paid March 23, 1906, and his account that day charged the amount of the note and interest.

Note of Harvey J. Steffey, dated January 23, 1906, No. 15,265, in the sum of \$1,200.00, payable to the Lewiston National Bank on demand, with interest at 10 per cent per annum. That the said note was paid December 29, 1906. That his account was not charged, but a renewal note for \$1,311.00 was given.

Note of Harvey J. Steffey, dated February 24, 1906, No. 15,323, in the sum of \$50.00, payable to the Lewiston National Bank on demand, with interest at 10 per cent per annum. The amount of the note was credited to his account, and paid March 28, 1906.

Note of Harvey J. Steffey, dated June 12, 1906, No. 15,477, in the sum of \$900.00, payable to the Lewiston National Bank in ninety [3350—2972] days, with interest at the rate of 10 per cent per annum. The amount of the note was credited to his account and paid by a renewal note for \$949.00 on December 29, 1906.

Note of Harvey J. Steffey, dated June 19, 1906, No. 15,498, in the sum of \$1,000.00, payable to the Lewiston National Bank on demand, with interest at the rate of 10 per cent per annum. Amount of the note credited to his account. Note paid July 12, 1906. Not charged to his account and no record of how note was paid.

Note of Harvey J. Steffey, dated August 6, 1906, No. 15,591, in the sum of \$300.00, payable to the Lewiston National Bank on demand, with interest at the rate of 10 per cent per annum. The amount of the note was credited to his account, and renewed December 29, 1906, by a note for \$312.00.

Note of Harvey J. Steffey, dated September 11, 1906, No. 15,648, in the sum of \$300.00, payable to the Lewiston National Bank on demand, with interest at the rate of 10 per cent per annum. The note was paid October 12, 1906, and was neither credited nor charged to his account, and there is no record of how paid.

Note of Harvey J. Steffey, dated December 29, 1906, No. 15,888, in the sum of \$1,311.00, payable to the Lewiston National Bank on demand, with interest at the rate of 10 per cent per annum. This note is a renewal of note of January 23, 1906, #15,265,

for \$1,200.00, and \$111.00 interest. Paid December 28, 1907, and not charged to Steffey's account.

Note of Harvey J. Steffey, dated December 29, 1906, No. 15,889, in the sum of \$949.00, payable to the Lewiston National Bank on demand with interest at the rate of 10 per cent per annum. This note was given in renewal of note dated June 12, 1906, #15,477, in the sum of \$900.00, and \$49.00 interest.

Note of Harvey J. Steffey, dated December 29, 1906, No. 15,890 in the sum of \$312.00, payable to the Lewiston National Bank [3351—2973] on demand, with interest at the rate of 10 per cent per annum. The amount of the note was credited to Steffey's account. Both of said last two notes paid March 11, 1907. The two notes, with interest, amounted to \$1,286.20. The records of the bank do not show who paid these notes, and on the day before, to wit, March 9, and 10, Steffey's account was overdrawn \$263.26. On March 11th his account was charged with a check for \$25.00, and on the same date his account was credited \$563.80, leaving a balance of \$275.54 at the close of business March 11, 1907.

Note of Harvey J. Steffey, dated January 17, 1907, No. 15,937, in the sum of \$1,000.00, payable to the Lewiston National Bank on demand, with interest at the rate of ten per cent per annum. Credited to Steffey's account. Paid December 28, 1907; not charged to Steffey's account.

Note of Harvey J. Steffey, dated April 2, 1907, No. 16,051, in the sum of \$350.00, payable to the Lewiston National Bank on demand, with interest at the rate of 10 per cent per annum. Paid December 28,

1907. Steffey's account not charged amount of note or interest.

Note of Harvey J. Steffey, dated April 4, 1907, No. 16,055, in the sum of \$700.00, payable to the Lewiston National Bank in six months, with interest at the rate of 10 per cent per annum. Credited to Steffey's account. Paid December 28, 1907. His account not charged.

Note of Harvey J. Steffey, dated July 6, 1907, No. 16,197, in the sum of \$300.00, payable to the Lewiston National Bank in three months, with interest at the rate of 10 per cent per annum. Credited to Steffey's account. Paid December 28, 1907. His account not charged.

And the complainant offers in evidence the following entries from the cash-book of the Lewiston National Bank, of date December 28, 1907: [3352—2974]

The cash book of the Lewiston National Bank shows that on December 28, 1907, the following of the above-mentioned notes were paid, with interest, setting out separately the number of each note, the amount of the note, and the amount of accrued interest:

Number.	Date.	Amount.	Interest.	
15888	Dec. 29, 1906.	\$1311.00	\$131.10	
15937	Jan. 17, 1907.	1000.00	95.50	
16051	Apr. 2, 1907.	350.00	26.00	
16055	Apr. 4, 1907.	700.00	51.40	
16197	July 6, 1907.	300.00	14.00	
		<hr/>	<hr/>	
		3661.00	318.00	\$3979.00

This amount of \$3,979.00 was not charged to Steffey's account at the Lewiston National Bank, he having no account with that institution at that time, said account having been closed out November 23, 1907.

The Ledger of the Lewiston National Bank shows that on December 27, 1907, the account of Kester & Kettenbach was overdrawn \$171.22; that on the following day, December 28, 1907, a deposit was made in said account of \$4,200.00, and one check in the sum of \$3,979.00 charged to that account, leaving a balance of \$49.78; that on December 28, 1907, a check in the sum of \$2,100.00 was charged to the individual account of George H. Kester, and a check in the sum of \$2,100.00 was charged to the individual account of William F. Kettenbach.

The Ledger of the Lewiston National Bank shows that on April 24, 1904, the account of Kittie E. Dwyer was overdrawn in the sum of \$244.25; that on April 25, 1904, four (4) checks were charged to her account, one for \$18.50, one for \$5.00, one for \$50.00, and one for \$48.00, and at the close of business that day her account was overdrawn \$365.75; that on April 26, 1904, a check for \$2.39 was charged to her account and her account was credited in the sum of \$96.00, and at the close of business on that date her account was overdrawn \$272.14.

The books of the Lewiston National Bank do not show that the amount of \$3,979.00 was charged to Steffey's account with that [3353—2975] institution, he having no account with the bank at that time, said account having been closed out November 23, 1907.

Mr. TANNAHILL.—The defendants will waive any further identification of the books of the Lewiston National Bank, but object to each and all of the evidence heretofore offered, upon the ground that it is irrelevant, incompetent and immaterial, and the defendants severally object to the same.

It is hereby stipulated by and between counsel for the respective parties hereto that the books of the Lewiston National Bank do not show that the sum of \$3,979 was charged to the account of Harvey J. Steffey, and the books do not show that at that time he was carrying an account upon the books of the Lewiston National Bank, his account having been closed November 23, 1907. But the defendants reserve the right and do severally object to the evidence, upon the ground that it is incompetent, irrelevant and immaterial.

It is further stipulated that the Ledger of the Lewiston National Bank shows that on December 27, 1907, the account of Kester & Kettenbach was overdrawn \$171.22; that on the following day, December 28, 1907, a deposit was made in said account of \$4,200.00, and one check in the sum of \$3,979 charged to that account, leaving a balance of \$49.78; that on December 28, 1907, a check in the sum of \$2,100 was charged to the individual account of George H. Kester, and a check in the sum of \$2,100 was charged to the individual account of William F. Kettenbach.

It is further stipulated by and between the parties that the Ledger of the Lewiston National Bank shows that on April 24, 1904, the account of Kittie

E. Dwyer was overdrawn in the sum of \$244.25; that on April 25, 1904, four checks were charged to her account, one for \$18.50, one for \$5.00, one for \$50.00, and one for \$48.00, and at the close of business that day her account was overdrawn \$365.75; that on April 26, 1904, a check for \$2.39 was charged to her account, and her account was credited in the sum of \$96.00, and at the close of business on that date her account was overdrawn \$272.14. The defendants [3354—2976] severally reserve the right to, and do, object to the admission of the evidence, upon the ground that it is incompetent, irrelevant and immaterial.

(Thereupon an adjournment was taken until 10 A. M., the 23d day of June, 1911.)

The hearing was resumed at 10 A. M., June 23, 1911, and the following proceedings were had:

Mr. GORDON.—We offer in evidence a deposit slip of the Lewiston National Bank, of Kittie E. Dwyer, which it is stipulated is in the handwriting of William F. Kettenbach, one of the defendants, both the writing on the front of the deposit slip and on the back thereof, which reads as follows:

[Complainant's Exhibit No. 120, 6/23/11.]

"THE LEWISTON NATIONAL BANK,

Lewiston, Idaho.

Deposited By

KITTIE E. DWYER

4/26/1904.

Two cks. given

to Wiggin for

cash 98

50

48

Less cash 2

96

(Written on back of deposit slip:)

[In pencil:]

"Guy Wilson	8	to K. & K.
Greenburg	8	to K. & K.
Bingham	8	to O. K.
McMillan	8	to K. E. D.
Mrs. Rowlands	8	to K. E. D.
J. O'Keefe	8	
Prentice	8	
E. Taylor	8	
Dammarell,	8	
Mrs. Justice	8	
C. W. Taylor	8	
F. Justice	8	

96

J. O'Keefe 8

88

[3355—2977]

(Said deposit slip was thereupon marked "Complainant's Exhibit No. 120, 6/23/11.")

Mr. TANNAHILL.—The defendants waive any further identification of the document, but object to the introduction of the exhibit in evidence, upon the ground that it is incompetent, irrelevant and immaterial.

**[Testimony of William F. Kettenbach, for
Defendants (Recalled).]**

WILLIAM F. KETTENBACH, a witness heretofore called and sworn in this case, upon being recalled on behalf of the defendants, testified as follows, on

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?

A. William F. Kettenbach.

Q. Where do you live?

A. Lewiston, Idaho.

Q. You are one of the defendants, are you?

A. Yes, sir.

Q. I hand you deposit slip of Kittie E. Dwyer, marked Complainant's Exhibit No. 120, just offered in evidence by the complainant, and ask you to examine it and state whether or not you made that deposit slip, and if it is in your handwriting.

A. It is in my handwriting; yes.

Q. Will you state what you know concerning the making of that deposit slip, how it came to be made, and how those endorsements on the back of it came to be made, and how that writing came to be there?

A. As far as the front of the deposit slip is concerned, I know nothing more than what it shows for

(Testimony of William F. Kettenbach.)

itself. It appears that I made out a deposit slip for Kittie E. Dwyer for \$96.00, to the effect that it was two checks given to Wiggins for cash, just what it says on the [3356—2978] face; and in the column on the left-hand side of the deposit slip there is an entry of \$50 and \$48, and below that is the word “less cash” \$2.00; then a line drawn, and “96.” Now, I made out thousands of deposit slips, and going back to 1904 I haven’t any recollection any more than what the memorandum there on this deposit slip shows, as far as the front of it is concerned. On the back of the slip is a list of names. Opposite the names the figure 8 appears opposite each name, and there are twelve names with the figure 8 appearing opposite each one of them. Then a line is drawn and addition made, and 96 is the total. Then just below that there is another name and the figure 8 opposite that, and that appears to be subtracted from the total above, 96, leaving a net total of 88. This is in indelible pencil, and in my handwriting. As far as what constituted this, why, my best recollection is that it was a memorandum of moneys deposited in the Lewiston National Bank by some officer in the land office who had brought the money down to procure—was in the habit of bringing money down to procure drafts to send away to local newspapers for advertising fee, the amount paid by entrymen at the time of their original application. To bear me out in this, I have looked up their certificate of deposit register, and find there on the 25th of April, 1904, there was a certificate of deposit made to F. M.

(Testimony of William F. Kettenbach.)

Roberts for \$151.70, and one to the "Pierce Miner" for \$151.70; and to my own knowledge I know that these were two local country newspapers nearest to the lands upon which people were filing in that locality, and the custom was sometimes to draw certificates of deposit individually, or at times to lump the whole sum and make out one certificate of deposit, and especially so if there was a large number of filers on any one day, the whole sum would be lumped by the land office officials, and one certificate made out. I have known of instances where they would bring down money and leave it there during part of the day, with the statement that they were coming later with some more, and I take it from this memorandum here that there must have been some moneys brought into the bank and left there temporarily [3357—2979] and accompanying that money I would venture a guess, or my best recollection is, that this was a memorandum of what was brought down, and it is in my handwriting. I notice that the certificates of deposit drawn on the 25th were made out in the handwriting of Mr. Bradbury, which would show that I didn't issue the certificate. I will say further that it was a common practice in the bank and for myself to use a blank deposit slip in the bank to make memorandums on. People ordering drafts or anything, I would use a blank deposit slip to make my memorandums on, and those would not be crumpled up and thrown away, but would lie there, and very likely some depositor coming in later the slip would be used on the face in the proper place to make out

(Testimony of William F. Kettenbach.)

the deposit; and from the fact that these certificates of deposit were issued to these newspapers for the land office on the 25th, and the date of this deposit is the 26th, would show me that this deposit slip was used properly for Kittie E. Dwyer subsequent to its being used as a memorandum slip in making out the memorandums I have spoken of, which would have happened the day before; and that is the best of my recollection on the subject.

Q. Will you read the record you have in relation to those certificates of deposit you have just referred to? What book have you now?

A. I have the certificate of deposit register of the Lewiston National Bank, No. 1, and I am reading under date of April 25.

Q. What year?

A. 1904. And the numbers of the certificates, the one to F. M. Roberts was 12,429, and the one to the "Pierce City Miner" was 12,430.

Q. What was the amount of each?

A. \$151.70, on the same day, was the amount of each certificate of deposit. It seems that the total collection of the land office that day was divided up between those two.

Q. Did the memorandum on the back of this deposit slip have anything to do with the entry on the face of it? [3358—2980]

A. I wouldn't say so; in fact I would say not.

Q. Did you or Mr. Kester pay the filing fees for any of these entrymen whose names appear on the back of this deposit slip? A. No, sir.

Mr. TANNAHILL.—That is all.

(Testimony of William F. Kettenbach.)

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Kettenbach, have you any recollection now as to where you received the information or the notation you made on the front of this deposit slip?

A. Why, only to my best recollection, it would be that I received it from the official who came down with the money.

Q. I am speaking about the front now.

A. Oh, the front. Just ask the question again.

(The stenographer read the question, as follows: "Mr. Kettenbach, have you any recollection now as to where you received the information or the notation you made on the front of this deposit slip?")

A. Why, I would take it from the deposit slip that it was the information I received at the time I made out the deposit slip.

Q. You don't know who you received the information from? A. No.

Q. Now, the amount paid at the land office at that period or at that time by each applicant under the Timber and Stone Act was how much?

A. Well, from my own personal knowledge, I know that it was \$8.00; I filed on one myself.

Q. And that was for publication notices, was it?

A. That is my understanding, that it went to the newspapers. The land office got none of that—the Government got none of that money at all. [3359—2981]

Q. Now, your best recollection is that some officer of the land office desired a certificate of deposit to

(Testimony of William F. Kettenbach.)

pay for publication fees of applicants at the land office at that time?

A. That is my best recollection. I bear it out by what I find in the records of the bank there. My memory wouldn't serve me right if I didn't have that.

Q. Did they bring the money to the bank, or did they have an account at that time and ask that it be charged to their account?

A. They had no account. It would be either money or checks. If my recollection serves me right, they simply brought the money, or if they accepted checks it was checks.

Q. They didn't accept checks, did they?

A. Yes, if they were well acquainted with the people, or anything like that, they would accept checks. Mr. West and Mr. Garby were the officers at that time, and they often came in with checks.

Q. These drafts that you drew that day were two drafts for \$151.70 each, were they?

A. Yes; that is what the records show.

Q. And in what form would they order a draft, or did they on this occasion, if you remember?

A. Well, the draft wasn't drawn by me; so I take it that they simply lumped a number of the application fees together, or took the total receipts for the day and divided them up between the two newspapers; that is the only thing I have to go by, is the record.

Q. You didn't draw any drafts that day?

A. I didn't draw the drafts, no, sir; Mr. Bradbury drew them.

(Testimony of William F. Kettenbach.)

Q. You have no independent recollection of the drafts at all? A. No, sir, none at all.

Q. And you have no independent recollection what that memorandum on the back of the deposit slip was for, as I understand?

A. Only a deduction, the only thing I could think of would be that it was a memorandum of a partial amount of money they brought [3360—2982] down and left there until they came in with the total. That was how many? That was seven years ago I haven't anything to go by but just what I can deduce from those things.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. There were people filing, you say, on the 25th of April?

A. Well, from my own knowledge from these suits and one thing and another, it has been impressed in my mind pretty clearly that the filings were on the 24th of April. My recollection is that it was the 24th; I am not certain; I won't say for certain, but as I remember it, the suits that were filed, and what was set forth in them. I have never taken occasion to go to the land office and look it up, but I think it was about the 24th.

Q. It was about that time? A. Oh, yes.

**[Testimony of William Dwyer, for Defendants
(Recalled).]**

WILLIAM DWYER, a witness heretofore sworn on behalf of the defendants, upon being recalled, testified as follows, on

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. William Dwyer.

Q. Where do you live, Mr. Dwyer?

A. Lewiston, Idaho.

Q. You are one of the defendants in these cases, are you? A. Yes, sir.

Q. And what relation are you to Kittie E. Dwyer?

A. I am her husband.

Q. The memorandum or original deposit slip Complainant's Exhibit No. 120), introduced by the complainant, shows two checks [3361—2983] given to Wiggins, for \$98.00. I hand you the deposit slip and ask you if you know anything about that transaction?

A. Why, I never saw that slip before, Mr. Tannahill, as I know of.

Q. I will ask you, Mr. Dwyer, if you gave to Ed. Wiggins a couple of checks on about that date?

A. Yes, sir.

Q. For \$48.00 and \$50.00? A. Yes, sir.

Q. Have you those checks? A. Yes, sir.

Q. Will you produce them, please?

(The witness did so.)

Mr. TANNAHILL.—The defendants offer in evidence the two checks just produced by the witness,

(Testimony of William Dwyer.)

and ask that they be marked the defendants' proper exhibits.

(Said checks were marked Defendants' Exhibit No. V-2 and Defendants' Exhibit No. W-2.)

Q. What were the circumstances of your giving these checks?

A. Why, I gave them to get some cash to pay a couple of men that was doing some work up the river, and before the bank opened in the morning. They were taking the morning train out.

Q. What were those men doing?

A. They were cruising, examining land, for the purpose of laying—vacant lands, for the purpose of laying scrip.

Q. Who were they cruising for?

A. Well, they were cruising for themselves, *looking land* generally. They cruised for anybody, or would report land for anybody that paid them for it.

Q. I mean who did they—who was this information given for? A. For Mr. Kettenbach.

Q. And Mr. Kester? [3362—2984]

A. And Mr. Kester, yes, sir.

Q. I see the names of C. D. Whitney and C. Evans on the checks. Were they the two men?

A. Yes, sir.

Q. These were for \$48 and \$50. Was that the amount that was due the men at that time?

A. Yes, less \$2.00 there that I got; I kept \$2.00 for myself there for some purpose. My recollection from looking over the checks there is that I wanted \$2.00 for myself, and I just simply drew a check for \$50.00

(Testimony of William Dwyer.)

and gave—it was the Whitney check there—I gave Whitney \$48.00 and I kept \$2.00.

Q. That is your recollection about it?

A. Yes, that is my recollection.

Q. Do you know where these two men are at this time? A. No, I don't.

Q. You have tried to find them since this came up?

A. Yes, I have made inquiries, but I can't find where they have been recently; I find where they have been four or five years ago, but not recently.

Q. Now, the back of this deposit slip shows Guy Wilson, \$8.00, and various other names here, E. Taylor, \$8.00, Dammarell, \$8.00—total \$96.00. Now, I will ask you if any part of this money was paid for filing fees or for any expenses of these parties whose names appear on the back of this deposit slip?

A. No, sir. That money was gotten so as those people could get away on the train. They came down the night before on a raft, down the river, and I told them I would get the money for them in the morning in time for them to make the train. I went to the cigar store and got the money.

Q. Do you have any knowledge of Kester and Kettenbach, or either of them, paying the filing fees or any expenses in relation to these various parties whose names appear on the back of this deposit slip?
[3363—2985] A. No, sir.

Mr. TANNAHILL.—That's all.

Cross-examination.

(By Mr. GORDON.)

Q. Where were those checks drawn, Mr. Dwyer, do

(Testimony of William Dwyer.)

you remember?

A. Why, I presume they were drawn there in the cigar-store.

Q. And I understand that they were drawn in payment of some expenses that you have related for Mr. William F. Kettenbach and Mr. George H. Kester?

A. Yes, sir. I would state further, Mr. Gordon, that some of the minutes of the same lands they gave, Mr. Kettenbach later on laid scrip on,—those two men.

Q. And is all the front of this check in your handwriting?

A. I think it is, yes. I made the checks out. Yes, sir, it is all in my handwriting.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. Mr. Dwyer, were there any other checks given to Ed. L. Wiggins about that time by you, or that you know of?

A. Why, I couldn't say. Oftentimes after banking hours or before the banks was open, I stepped into places and got money.

Q. Was there any other checks for \$48 and \$50 given about that time?

A. I don't think there were.

Q. You have no knowledge of any? A. No.

Q. Have you searched through your vouchers to ascertain whether or not you had any other checks of that amount? A. Yes, sir.

Q. And you were unable to find any others?

(Testimony of William Dwyer.)

A. Yes, sir. [3364—2986]

Q. You haven't been able to find any?

A. I haven't been able; no, sir.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all.

It was thereupon stipulated by and between counsel for the respective parties that if the witnesses C. D. Whitney and C. Evans were personally present they would testify as follows:

That they were employed by William Dwyer, one of the defendants, for the purpose of cruising land and furnishing certain minutes of land, and that they came to Lewiston in the evening and left on the early morning train of April 25th, and that one of them received \$50.00 and the other one received \$46.00, or each one of them received \$48.00. But by this stipulation it is not conceded by the complainant that such evidence is true.

**[Testimony of William F. Kettenbach, for
Defendants (Recalled).]**

WILLIAM F. KETTENBACH, a witness heretofore sworn in this case, and recalled in behalf of the defendants, testified as follows, on

Direct Examination.

(By Mr. TANNAHILL.)

Q. Mr. Kettenbach, you have heretofore testified concerning some notes which was given by Harvey J. Steffey to the Lewiston National Bank. I now call your attention to some notes the record of which was introduced in evidence on yesterday by the com-

(Testimony of William F. Kettenbach.)

plainant in these cases, and especially a note, No. 15,888, dated December 29, 1906, for \$1,311.00, and \$131.10 interest; No. 15,937, bearing date January 17, 1907, for \$1,000.00, and \$95.50 interest; and note No. 16,051, bearing date April 2, 1907, for \$350.00 and \$26.00 interest and note No. 16,055, bearing date April 4, 1907, for \$700.00, and \$51.40 interest; and note No. 16,197, bearing date July 6, 1907, for \$300.00, and \$14.00 interest, aggregating \$3,979.00, which notes are shown to have been paid, according to the records and books of the [3365—2987] Lewiston National Bank, December 28, 1907. Do you know anything about those notes?

A. Yes, sir.

Q. And about their payment? A. Yes, sir.

Q. What was the circumstances of the notes being given, and their payment?

A. Well, to begin with, Mr. Steffey borrowed money numerous times from the Lewiston National Bank, and the notes were paid or renewed, or run along for quite a period. He was a regular customer of the bank, and I think Mr. Steffey's credit was established in this way, that we knew he owned what we considered to be two very valuable timber claims, and my understanding, and I think Mr. Kester's was the same, was that he had a rating of between six and seven thousand dollars, on account of his ownership of those timber claims, and his credit up to a certain amount was never questioned. So he borrowed money, and, as I say, his notes were renewed and paid off, and the records of the bank will show

(Testimony of William F. Kettenbach.)

it, and up to the time Mr. Kester and I went out of the bank in July, 1907, at that time Mr. Steffey was indebted to the bank in a considerable amount, as the books show. And matters run on for about six months after we went out of the bank, and in one of our consultations with Mr. Frank Kettenbach, who was then president, regarding paper that was in the bank at the time he came in there, the question came up about these Steffey notes, and it was just about the time Mr. Kester and I were having a settlement there in the bank, a semi-annual settlement of anything we had to tend to there, and Mr. Kettenbach told us that he wasn't very well satisfied with those notes, because he wasn't acquainted with what was behind them, wasn't personally acquainted with Mr. Steffey, and didn't understand the nature of the credit, or how to classify it hardly, and we talked the matter over one way and another, and Mr. Kester and I told him that if he wasn't thoroughly satisfied with that paper that he could charge it to us, that [3366—2988] we would take it up, we would buy it of him. And Mr. Kettenbach thought that was the best way out of it, naturally looking after the assets of the bank, what would concern him; and Mr. Kester and I agreed to purchase the paper from the bank. We did it just the same as anybody would purchase any paper; we bought the notes and paid for them, and the settlement was made I suppose on that date, and shows that the notes was paid for. We bought the notes and owned them, and subsequent to that time Mr. Stef-

(Testimony of William F. Kettenbach.)

fey had some trouble with Mr. Dwyer and took occasion to relieve himself of the credit that he had, or the assets that he had in the shape of these timber claims; in other words, he transferred these timber claims to other parties and got them out of his hands, and Mr. Kester and I was left with some of the paper on our hands; I don't think it was the total amount there. I think there was some settlement on part of that; I don't just recall. Anyway, as far as the matter is pertinent here, it seems to me we simply purchased that paper from the Lewiston National Bank, satisfied Mr. Frank Kettenbach, and what ones of the notes are still left, we still own them, and there is absolutely no credit behind Mr. Steffey now, and it is a matter of profit and loss as far as Mr. Steffey is concerned.

Q. The notes have not yet been fully paid?

A. No, sir, not all of them.

Q. And haven't been returned to Mr. Steffey?

A. No, sir; we still own the notes.

Q. State whether or not they were taken up pursuant to any agreement with Mr. Steffey.

A. No, the notes were bought outright, and afterwards there was some settlement with Mr. Steffey about one of the claims; I can't recall, but I think one of the claims was sold; but the basis of his credit he got rid of, I know that.

Cross-examination.

(By Mr. GORDON.)

Q. You have not the notes with you, have you, Mr. Kettenbach? [3367—2989] A. No, sir.

(Testimony of William F. Kettenbach.)

Q. Do you know whether he ever paid anything on those notes?

A. As I say, I think he did. I think Mr. Kester had a settlement with him on part of those notes.

Q. Do you know how much it was?

A. No, I couldn't say; in fact Mr. Kester may have the balance of these notes now; I don't know where they are.

The case was thereupon closed, with the exception of the right of either party to call the witnesses Evans and Whitney in case they can be produced, as hereinbefore stipulated. [3368—2990]

[Stipulation Re Memoranda and Abstract of Exhibits, etc.]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

IN EQUITY—No. 406.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

IN EQUITY—No. 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

It is hereby stipulated by and between the parties to the above-entitled causes that the memoranda and abstract of the exhibits in said causes, hereto attached, consisting of pages numbered consecutively from 1 to 321, shall have the same force and effect as though said exhibits were copied in full in the transcript of the record of said causes on appeal to the Circuit Court of Appeals for the Ninth Circuit, provided, however, that any party claiming any error or omission in the said memoranda and abstract, or desiring to have any original document heretofore offered in evidence in any of said causes submitted to said Circuit Court of Appeals, may without application to said Court of Appeals have any such original document sent by the Clerk to the Clerk of said Court of Appeals, and any such claimed error or omission shown by a copy certified by the [3369] Clerk below and filed with the Clerk of said Court of Appeals, with two copies thereof and a copy thereof served personally or by U. S. mail on the adverse party, and that any matter so supplied shall

have like effect as if supplied on order of said Court of Appeals.

Dated this 12th day of December, A. D. 1912.

PEYTON GORDON,
Special Assistant to the Attorney General,
Solicitor for Complainant.
GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,
George H. Kester, William Dwyer, Elizabeth
White, Edna P. Kester, Martha E. Hallett and
Kitty E. Dwyer.

JAMES E. BABB,
Solicitor for Defendants, Clearwater Timber Com-
pany, Lewiston Nat'l. Bank, Idaho Trust Com-
pany and F. W. Kettenbach.

EUGENE A. COX.
CLARENCE W. ROBNETT,
Defendant.

[Endorsed]: Filed Dec. 14, 1912. A. L. Richardson,
Clerk. [3370]

**Copy of Form of Sworn Statement upon Which All
Sworn Statements Hereinafter Referred to
were Made.**

4—537.

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

TIMBER & STONE LANDS.—SWORN STATEMENT.

(TO BE MADE IN DUPLICATE.)

Land Office at

(Date) 190

I,, of (town or city) county of
, State (or Territory) of, desiring
 to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, for the purchase of the

 of Section, Township, of Range
, in the district of lands subject to sale at
 do solemnly that I am a native
 (or naturalized) citizen (or have declared my intention to become a citizen) of the United States, of the age of, and by occupation; that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its; that it is uninhabited; that it contains no mining or other improvements [3371—1] nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract,

or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is

.....

I HEREBY CERTIFY that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by), and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this day of, 190

.....,
Register (or Receiver).

NOTE.—Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land or of any right, title or claim thereto, are absolutely null and void as against the United States.
[3372—2]

In case the party has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

(Copy of Back of Timber & Stone Lands S. S.)

4—537.

TIMBER LANDS.

(Acts of June 3, 1878, and August 4, 1892.)

SWORN STATEMENT.

LAND OFFICE AT

.....
Sec., Township

Range

**Copy of Form of Nonmineral Affidavit upon Which
All Nonmineral Affidavits Hereinafter Referred
to were Made.**

4—062.

NONMINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The Nonmineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits [3373—3] required of the entrymen.

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

.....

..... 190

....., being duly sworn according to law, deposes and says that he is the identical who is an applicant for Government title to the; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said

land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposit of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his postoffice address is

.....

I hereby certify that the foregoing affidavit [3374—4] was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in, within the land district, on this day of, 190

.....

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

REVISED STATUTES OF THE UNITED STATES.

TITLE LXX.—CRIMES.—CHAP. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)
[3375—5]

**Copy of Form of Notice for Publication upon Which
All Notices for Publication Hereinafter Re-
ferred to Were Made.**

(4-357.)

**TIMBER LAND, ACT JUNE 3, 1878,—NOTICE
FOR PUBLICATION.**

UNITED STATES LAND OFFICE.

.....
.....190....

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892,, of, county of, State (or Territory) of, has this day filed in this office his sworn statement No., for the purchase of the, of Section No., in Township No., Range No., and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at on, the day of, 190....

He names as witnesses:

..... of.....
..... of.....
..... of.....
..... of.....

Any and all persons claiming adversely the above

described lands are requested to file their claims in
 this [3376—6] office or before said day of
, 190....

.....,

Register.

This notice must be published once a week for ten
 consecutive weeks in a newspaper published nearest
 the land, and must also be posted in a conspicuous
 place in the land office for the same period.

CERTIFICATE AS TO POSTING OF NOTICE.

UNITED STATES LAND OFFICE,

.....

.....190....

I,, Register of the Land Office, certify
 that the above notice was by me posted in a conspicu-
 ous place in my office during the period of sixty (60)
 days and over, I having first posted the same on the
 day of, 190....

I further certify that there are no adverse claims
 to the land herein described known to this office.

.....,

Register.

Proof of Publication.

Copy of Questions Asked All Claimants and Entry-men Hereinafter Referred to at Final Proof.

4-370.

(The Testimony of claimant and witnesses must be taken AT THE SAME TIME, and before the REGISTER and RECEIVER of the land district in which the land is situated.)

TIMBER AND STONE LANDS.

TESTIMONY OF CLAIMANT.

....., being called as a witness [3377—7]
in support of his application to purchase the.....
.....
of Section....., Township....., Range.....
testifies as follows:

QUESTION 1.—What is your age, post-office address, and where do you reside?

ANSWER.

QUES. 2.—Are you a native born citizen of the United States; and if so, in what State or Territory were you born?

ANS.

QUES. 3.—Are you the identical person who applied to purchase this land on the day of, 1...., and made the sworn statement assigned by law before the Register (or Receiver) on that day?

ANS.

QUES. 4.—Are you acquainted with the land above described by personal inspection of each of its

smallest legal subdivisions?

ANS.

QUES. 5.—When and in what manner was such inspection made?

ANS.

QUES. 6.—Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

ANS.

QUES. 7.—Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

ANS.

[3378—8]

QUES. 8.—What is the situation of this land, and what is the nature of the soil, and what causes the land unfit for cultivation?

ANS.

QUES. 9.—Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

ANS.

QUES. 10.—Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

ANS.

QUES. 11.—From what facts do you conclude that

the land is chiefly valuable for timber and stone?

ANS.

.....
QUES. 12.—What is the estimated market value of the timber standing upon this land?

ANS.

.....
In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen, or naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case.

QUES. 13.—Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United [3379—9] States may inure, in whole or in part to, the benefit of any person except yourself?

ANS.

QUES. 14.—Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit for any other person?

ANS.

QUES. 15.—Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

ANS.

.....

I HEREBY CERTIFY that the above named
 personally appeared before me; that I
 verily believe affiant to be the person he represents
 himself to be; and that each question and answer in
 the foregoing testimony was read to him in my
 presence before he signed his name thereto, and that
 the same was subscribed and sworn to before me at
, this day of, 190.....

.....

Register (or Receiver).

NOTE.—Every person swearing falsely to the
 above deposition is guilty of perjury and will be
 punished as provided by law for such offense. In
 addition thereto the money that may be paid for the
 lands is forfeited, and all conveyances of the land or
 of any right, title, or claim thereto are absolutely
 null and void as against the United States.

I HEREBY CERTIFY that I have tested the
 accuracy of affiant's information and the *bona fides*
 of this [3380—10] entry by a close and sufficient
 oral cross-examination of the claimant and his wit-
 nesses, directed to ascertain whether the entry is
 made in good faith for the appropriation of the land
 to the entryman's own use and not for sale or
 speculation, and whether he has conveyed the land
 or his right thereto, or agreed to make any such con-
 veyance, or whether he has directly or indirectly
 entered into any contract or agreement in any
 manner with any person or persons whomsoever by
 which the title that may be acquired by the entry
 shall inure in whole or in part to the benefit of any
 person or persons except himself, and am satisfied

from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm, or corporation.

.....

Register (or Receiver).

(Copy of Back).

4—370.

TIMBER LANDS.

Acts of June 3, 1878, and August 4, 1892.

TESTIMONY OF CLAIMANT.

LAND OFFICE AT

.....

Section

Township

Range

[3381—11]

**Copy of Questions Asked Claimants and Entrymen
Hereinafter Referred to on Cross-examination
on Final Proof.**

TIMBER AND STONE LANDS.

CROSS-EXAMINATION OF CLAIMANT IN CONNECTION WITH DIRECT EXAMI- NATION ON FORM 4—370.

(Before taking the testimony the Register and Receiver will read or cause to be read, to the witness, Section 2392 of the Revised Statutes, in regard to perjury—see bottom of page on Form 4-471—and see that witness understands same.)

Question 1. Are you an actual *bona fide* citizen

of this State?

Question 2. Are you married or single?

Question 3. Where did you reside prior to becoming a resident of this State, and what was your occupation?

Question 4. How long have you been an actual resident of this State, and where have you lived during all of this time?

Question 5. What has been your occupation during the past year, and where and by whom have you been employed, and at what compensation?

Question 6. How did you first learn about this particular tract of land, and that it would be a good investment to buy it?

Question 7. Did you pay or agree to pay anything for this information? If so, to whom, and the amount?

Question 8. Have you made a personal examination of [3382—12] each smallest subdivision of said land? If so, state when and under what circumstances and with whom?

Question 9. How did you identify said land? Describe it fully.

(Cross-examination of Claimant —2—).

Question 10. How many thousand feet, board

measure, of lumber did you estimate that there is on this entire tract, and what is the stumpage value of same?

Question 11. Are you a practical lumberman or woodsman? If not, how did you arrive at your estimate of the quantity and value of the lumber on the land?

Question 12. What do you expect to do with this land and the lumber on it when you get title to it?

Question 13. Do you know of any capitalist or company which is offering to purchase timber land in the vicinity of this entry? If so, who are they, and how did you know of them?

Question 14. Has any person offered to purchase this land after you acquire title? If so, who, and for what amount?

Question 15. Where is the nearest and best market for the timber on the land at the present time?

Question 16. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own [3383—13] money?

Question 17. Where did you get the money with which to pay for this land, and how long have you

had the same in your actual possession?

Question 18. Have you kept a bank account during the last six months? If so, where?

Subscribed and sworn to before me this day of 190.....

.....

Register.

In addition to the foregoing the officer before whom the proof is made will ask such questions as seem necessary to bring out all the facts in the case.

Copy of Questions Asked Witnesses Hereinafter Referred to at Final Proof.

4—371.

(The testimony of two witnesses, in this form, taken separately, required in each case.)

TESTIMONY OF WITNESS UNDER ACTS OF JUNE 3, 1878, AND AUGUST 4, 1892.

....., being called as a witness in support of the application of to purchase the
.....
of Section, Township of Range
....., testifies as follows:

QUESTION 1.—What is your age, postoffice address, and where do you reside?

ANSWER.
[3384—14]

QUES. 2.—Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

ANS.

QUES. 3.—When and in what manner was such inspection made?

ANS.

QUES. 4.—Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

ANS.

QUES. 5.—Is it fit for cultivation?

ANS.

QUES. 6.—What causes render it unfit for cultivation?

ANS.

QUES. 7.—Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable?

ANS.

QUES. 8.—Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

ANS.

QUES. 9.—From what facts do you conclude that the land is chiefly valuable for timber or stone?

ANS.

QUES. 10.—Do you know whether the applicant has directly or indirectly made any agreement or contract, in [3385—15] any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit

of any person except himself?

ANS.

QUES. 11.—Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

ANS.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed name thereto, and that the same was subscribed and sworn to before me this day of, 190....

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX.—CRIMES.—CHAPTER 4.

SEC. 5392.—Every person who, having taken oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of [3386—16] perjury, and shall be punished by a fine of not more than two thousand dollars, and by im-

prisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

(Copy of Back.)

4—371.

TIMBER LANDS.

Acts of June 3, 1878, and August 4, 1892.

TESTIMONY OF WITNESS.

LAND OFFICE AT

.....
Section.....
Township.....
Range.....

**Copy of Questions Asked Witnesses Hereinafter
Referred to on Cross-examination at Final
Proof.**

TIMBER AND STONE LANDS.

CROSS-EXAMINATION OF WITNESSES IN
CONNECTION WITH DIRECT EXAMI-
NATION ON FORM 4—371.

(Before taking the testimony the Register and Receiver will read or cause to be read, to the witness, Section 2392 of the Revised Statutes, in regard to perjury—see bottom of page on Form 4—471—and see that witness understands same.)

Question 1. Where is your actual place of residence, and how long have you been a resident of the State of Idaho?

.....

Question 2. Have you ever made a timber and stone [3387—17] filing or entry in the Lewiston, Idaho, land office? If so, where and for what land?

.....

Question 3. Explain the circumstances under which you made a personal examination of this land. Describe the tract fully.

.....

Question 4. What has been your occupation for the last six months?

.....

Question 5. By whom have you been employed during the last six months?

.....

Question 6. How long have you known the applicant?

Question 7. What is his financial condition so far as you know?

Question 8. Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land, and hold it for six months without mortgaging it?

Subscribed and sworn to before me this . . . day of . . . , 190.....

.....,

Register.

In addition to the foregoing the officer before whom the proof is made will ask such questions as seem necessary to bring out all the facts in the case.

**Copy of Form of Receiver's Receipt Hereinafter
Referred to.**

4—131.

RECEIVER'S OFFICE AT
NO. [3388—18]

....., 190....

RECEIVED from, of County,
....., the sum of dollars and
cents; being in full for the.....
.....
..... quarter of Section No., in Town-
ship No., of Range No., contain-
ing acres and hundredths, at \$.
per acre.

.....,

Receiver.

\$.....

\$..... testimony fee received. Number of
written words, Rate per 100 words,
cents.

**Copy of Form of Final Certificate Hereinafter
Referred to.**

4—189.

NO.

LAND OFFICE AT

....., 18....

IT IS HEREBY CERTIFIED that, in pursuance
of law,, residing at, in
County, State of, on this day purchased

of the Register of this Office the

 of Section No. in Township No.
 of Range No. of the
 Principal Meridian, containing
 acres, at the rate of dollars and
 cents per acre, amounting to dollars and
 cents, for which the said has made
 payment in full as required by law. [3389—19]

NOW, THEREFORE, BE IT KNOWN that, on
 presentation of this certificate to the COMMIS-
 SIONER OF THE GENERAL LAND OFFICE,
 the said shall be entitled to receive a Patent
 for the lot above described.

.....,
 Register.

(COPY OF BACK OF REGISTER'S CERTI-
 FICATE.)

4—189.

No.

CASH ENTRY.

LAND OFFICE AT

.....

Sec., Town, Range

Approved

By, Clerk.

Division

Patented

Recorded Vol., Page

**Copy of Form of Patent Hereinafter Referred to
upon Which All Patents were Issued and Made.**

**THE UNITED STATES OF AMERICA, TO ALL
TO WHOM THESE PRESENTS SHALL
COME, GREETING:**

Certificate No.

WHEREAS has deposited in the GENERAL LAND OFFICE of the United States, a Certificate of the Register of the Land Office at, whereby it appears that full payment has been made by [3390—20] the said, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled “An Act making further provision for the sale of the Public Lands,” and the acts supplemental thereto, for the according to the Official Plat of the Survey of the said lands, returned to the GENERAL LAND OFFICE by the Surveyor General, which said Tract has been purchased by the said

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said and to heirs, the said Tract above described TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said and to heirs and assigns forever; subject to any vested and accrued

water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof I,, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office [3391—21] to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the . . . day of, in the year of our Lord one thousand nine hundred and . . . , and of the Independence of the United States the one hundred and

By the President:,

By,

Secretary,

.,

Recorder of the General Land Office.

PATENT NUMBER. [3392—22]

Plaintiff's Exhibits 1, 1-a to 1-l, Inclusive, All Relate to the Application and Entry of Guy L. Wilson.

Plaintiff's Exhibit No. 1: Guy L. Wilson, Occupation, laborer. Sworn statement No. 1321, dated and

filed April 25, 1904, for entry of lots 3 and 4, and the Northeast quarter of the Southwest quarter and the Northwest quarter of the Southeast quarter of Section 19, Tp. 39, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 1-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 1-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 1-c: Notice for publication.

Plaintiff's Exhibit No. 1-d: Answers given by Guy L. Wilson to questions 5, 12, 13, 14 and 15 at Final Proof, July 13, 1904.

Answer to question No. 5: October 9, 1903. Walked over it.

Answer to question No. 12: \$1,000.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 1-e: Final Certificate No. 4770, dated July 13, 1904.

Plaintiff's Exhibit No. 1-f: Receiver's receipt No. 4770, dated July 13, 1904.

Plaintiff's Exhibit No. 1-g: Answers given by Guy L. Wilson to questions 10, 11, 12, 13, 14, 15, 16, 17 and 18 on cross-examination at final proof.

Answer to question No. 10: 1,000,000 feet, \$1,000.00

Answer to question No. 11: No. Took estimate of locator.

Answer to question No. 12: Hold it for the future.

Answer to question No. 13: No. [3393—23]

Answer to question No. 14: No.

Answer to question No. 15: Lewiston, Idaho.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: I saved it from my earnings, 21½ years.

Answer to question No. 18: No.

Plaintiff's Exhibit No. 1-h: Answers of William Dwyer, witness at final proof, July 13, 1904, to questions 10 and 11.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 1-i: Answers of witness William Dwyer, on cross-examination at final proof, to questions 7 and 8.

Answer to question No. 7: Good.

Answer to question No. 8: No.

Plaintiff's Exhibit No. 1-j: Answers of witness Edwin Bliss, given at final proof, July 13, 1904, to questions 10 and 11.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 1-k: Answers of Edwin Bliss, given on cross-examination at final proof, to questions 7 and 8.

Answer to question No. 7: I do not know.

Answer to question No. 8: No.

Plaintiff's Exhibit No. 1-1: Certified copy of patent dated December 31, 1904, granting to Guy L. Wilson the land described in Plaintiff's Exhibit No. 1. [3394—24]

**Plaintiff's Exhibits Nos. 2 and 2-a to 2-l, Inclusive,
All Relate to the Application and Entry of Fred
W. Shaeffer.**

Plaintiff's Exhibit No. 2: Fred W. Shaeffer. Occupation, janitor. Sworn statement No., dated and filed May 5, 1902, for the entry of the East half of the Northwest quarter, the Southwest quarter of the Northeast quarter, and the Northwest quarter of the Southeast quarter of Section 27, Tp. 40, North of Range 1 West, Boise Meridian.

Plaintiff's Exhibit No. 2-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 2-b: Notice for publication.

Plaintiff's Exhibit No. 2-c: Answers given by Fred W. Shaeffer to questions Nos. 12, 13, 14 and 15 at final proof, July 25, 1902.

Answer to question No. 12: \$2,000.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 2-d: Answers given by Fred W. Shaeffer to questions Nos. 10, 11, 12, 13, 14 16, 17 and 18 on cross-examination at final proof.

Answer to question No. 10: 2,000,00 feet. \$2,000.00.

Answer to question No. 11: No. Guessing at it.

Answer to question No. 12: I intend to keep it.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: I earned half of it la-

boring, the balance I borrowed from the Lewiston National Bank. [3395—25]

Answer to question No. 18: No.

Plaintiff's Exhibit No. 2-e: Answers of William F. Kettenbach, witness, at final proof, July 25, 1902, to questions Nos. 10 and 11.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 2-f: Cross-examination of the witness William F. Kettenbach at final proof.

Plaintiff's Exhibit No. 2-g: Answers of witness William Dwyer given on final proof, July 25, 1902, to questions Nos. 10 and 11.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 2-h: Cross-examination of William Dwyer, witness at final proof.

Plaintiff's Exhibit No. 2-i: Final certificate No. 3795, dated July 25, 1902.

Plaintiff's Exhibit No. 2-j: Receiver's receipt No. 3795, dated July 25, 1902.

Plaintiff's Exhibit No. 2-k: Certified copy of patent, dated January 28, 1904, granting to Fred W. Shaeffer the land described in Plaintiff's Exhibit No. 2.

Plaintiff's Exhibit No. 2-l: Certified copy of warranty deed, dated July 26, 1902, made by Fred W. Shaeffer and conveying to W. F. Kettenbach and George H. Kester in fee simple, the land described in Plaintiff's Exhibit No. 2 recorded at the request of Latah Co. abst. Co., June 8, 1903.

**Plaintiff's Exhibits Nos. 3-a to 3-o, Inclusive,
Relate to the Application and Entry of William
Haevernicks. [3396—26]**

Plaintiff's Exhibit No. 3-a: William Haevernicks. Occupation, merchant. Sworn statement dated and filed October 26, 1903, for the Southeast quarter of the Southeast quarter of Section 23, and the Northeast quarter of the Northeast quarter of Section 26, in Tp. 37, North of Range 2 East, Boise Meridian.

Plaintiff's Exhibit No. 3-b: Duplicate of sworn statement.

Plaintiff's Exhibit No. 3-c; Notice for publication.

Plaintiff's Exhibit No. 3-d: Nonmineral affidavit.

Plaintiff's Exhibit No. 3-e: Proof of publication.

Plaintiff's Exhibit No. 3-f: Certificate as to naturalization of William Haevernicks.

Plaintiff's Exhibit No. 3-g: Answers given by William Haevernicks to questions Nos. 12, 13, 14 and 15 at final proof, January 6, 1904.

Answer to question No. 12: \$800.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 3-h: Answers given by William Haevernicks to questions Nos. 6 and 7 and 10 to 18, inclusive, on cross-examination at final proof.

Answer to question No. 6: I saw from the plat that it was vacant, and went to see it.

Answer to question No. 7: No.

Answer to question No. 10: 450,000 feet of saw timber and 1200 cords of wood, \$800.00.

Answer to question No. 11: No, I had it estimated.

Answer to question No. 12: I expect to hold it for awhile.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: Orofino, Idaho.

[3397—27]

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: I earned it in my merchandising business, 2 years.

Answer to question No. 18: Yes. Idaho Trust Company, Lewiston, Idaho.

Plaintiff's Exhibit No. 3-i: Receiver's receipt No. 4635, dated January 6, 1904.

Plaintiff's Exhibit No. 3-j: Final certificate No. 4635, dated January 6, 1904.

Plaintiff's Exhibit No. 3-k: Testimony of witness Joseph Mortimore given at final proof.

Plaintiff's Exhibit No. 3-l: Cross-examination of witness Joseph Mortimore at final proof.

Plaintiff's Exhibit No. 3-m: Testimony of witness Axel Gabrielson given at final proof.

Plaintiff's Exhibit No. 3-n: Cross-examination of Axel Gabrielson.

Plaintiff's Exhibit No. 3-o: Certified copy of patent dated November 1, 1904, granting to William Haevernack the land described in Plaintiff's Exhibit No. 3-a.

**Plaintiff's Exhibits Nos. 4-a to 4-o, Inclusive,
Relate to the Application and Entry of Alma
Haevernick.**

Plaintiff's Exhibit No. 4-a: Alma Haevernick. Occupation, housekeeper. Sworn statement dated and filed October 26, 1903, for entry of the Southeast quarter of Section 26, Tp. 37, North of Range 2 East, Boise Meridian.

Plaintiff's Exhibit No. 4-b: Duplicate of sworn statement.

Plaintiff's Exhibit No. 4-c: Notice for publication. [3398—28]

Plaintiff's Exhibit No. 4-d: Nonmineral affidavit.

Plaintiff's Exhibit No. 4-e: Proof of publication.

Plaintiff's Exhibit No. 4-f: Affidavit of Alma Haevernick dated January 6, 1904, in which she makes oath to statement similar to that made in sworn statement.

Plaintiff's Exhibit No. 4-g: Testimony of Alma Haevernick given at final proof.

Plaintiff's Exhibit No. 4-h: Cross-examination of Alma Haevernick at final proof.

Plaintiff's Exhibit No. 4-i: Testimony of witnesses Axel Gabrielson at final proof.

Plaintiff's Exhibit No. 4-j: Cross-examination of witness Axel Gabrielson at final proof.

Plaintiff's Exhibit No. 4-k: Testimony of witness Joseph Mortimer at final proof.

Plaintiff's Exhibit No. 4-l: Cross-examination of witness Joseph Mortimer at final proof.

Plaintiff's Exhibit No. 4-m: Receiver's receipt No. 4636, dated January 6, 1904.

Plaintiff's Exhibit No. 4-n: Final certificate No. 4636, dated January 6, 1904.

Plaintiff's Exhibit No. 4-o: Certified copy of patent dated November 1, 1904, granting to Alma Haevernick the land described in Plaintiff's Exhibit No. 4-a.

**Plaintiff's Exhibits Nos. 5 and 5-a to 5-m, Inclusive,
Relate to the Application and Entry of William
J. White.**

Plaintiff's Exhibit No. 5: William J. White. Occupation, ferryman. Sworn statement dated April 25, 1904, [3399—29] for entry of the South half of the North half of Section 14, in Tp. 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 5-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 5-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 5-c: Notice for publication.

Plaintiff's Exhibit No. 5-d: Proof of publication.

Plaintiff's Exhibit No. 5-e: Testimony of William Dwyer, witness at final proof, July 14, 1904.

Plaintiff's Exhibit No. 5-f: Cross-examination of witness William Dwyer at final proof.

Plaintiff's Exhibit No. 5-g: Testimony of witness Edwin Bliss, given at final proof, July 14, 1904.

Plaintiff's Exhibit No. 5-h: Answers given by William J. White to questions Nos. 12, 13, 14 and 15 at final proof, July 14, 1904.

Answer to question No. 12: From \$1,000.00 to \$1,500.00.

Answer to question 13: No. No.

Answer to question No. 14: Yes.

Answer to question No. 15: Yes.

Plaintiff's Exhibit No. 5-i: Answers given by William J. White on cross-examination at final proof to questions Nos. 6 and 7, 10, 12, 13 to 18 inc.

Answer to question No 6: Through Mr. William Dwyer.

Answer to question No. 7: Yes—to William Dwyer —\$100.00.

Answer to question No. 10: About 1 million ft., about \$1,000 or \$1,500.

Answer to question No. 12: Keep it for awhile—for my own use.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: I don't know unless it is Lewiston.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: I earned it—a year.

Answer to question No. 18: Yes, Lewiston Nat. Bank.

Plaintiff's Exhibit No. 5-j: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 5-k: Receiver's receipt No. 4775, dated July 14, 1904.

Plaintiff's Exhibit No. 5-l: Final certificate No. 4775, dated July 14, 1904.

Plaintiff's Exhibit No. 5-m: Certified copy of patent dated December 31, 1904, granting to William J. White [3400—30] the land described in Plaintiff's Exhibit No. 5

**Plaintiff's Exhibits Nos. 6-a to 6-u, Inclusive,
Relate to the Application and Entry of Soren
Hansen.**

Plaintiff's Exhibit No. 6-q: Soren Hansen. Occupation, farmer. Sworn statement dated and filed February 26, 1903, for entry of the Southeast quarter of Section 10, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 6-p: Duplicate of sworn statement.

Plaintiff's Exhibit No. 6-o: Notice of publication.

Plaintiff's Exhibit No. 6-n: Nonmineral affidavit.

Plaintiff's Exhibit No. 6-m: Affidavit of Soren Hansen, sworn to before Charles H. Garber, Receiver of the Land Office, May 26, 1903, to the effect that he cannot make proof that day for the reason that he is unable to get his witnesses.

Plaintiff's Exhibit No. 6-l: Copy of declaration of Hansen to become a citizen of the United States.

Plaintiff's Exhibit No. 6-k: Certification of correctness of copy of declaration of intention to become a citizen.

Plaintiff's Exhibit No. 6-j: Affidavit by Soren Hansen dated June 5, 1903, to the effect that he is the same person mentioned in the papers connected with the entry as *Loren Hansen*.

Plaintiff's Exhibit No. 6-i: Proof of publication.

Plaintiff's Exhibit No. 6-h: Testimony of Edward Knight, witness at final proof, June 5, 1903.

Plaintiff's Exhibit No. 6-g: Cross-examination of Edward Knight at final proof.

Plaintiff's Exhibit No. 6-f: Testimony of witness William B. Benton at final proof, June 5, 1903.

[3401—31]

Plaintiff's Exhibit No. 6-e: Cross-examination of witness William B. Benton at final proof.

Plaintiff's Exhibit No. 6-d: Answers given by Soren Hansen to questions Nos. 4, 5, 6, 7, 8, 11, 12, 13, 14 and 15 at final proof June 5, 1903.

Answer to question No. 4: Yes.

Answer to question No. 5: February 19th, 1903. I walked over it.

Answer to question No. 6: No. None.

Answer to question No. 7: No. I think not.

Answer to question No. 8: Rough and rocky in places. Too high and too cold and timbered.

Answer to question No. 11: Because it is covered with timber, and I do not think anything else would grow on it.

Answer to question No. 12: \$1,500.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 6-c: Answers given by Soren Hansen to questions No. 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 18 on cross-examination at final proof.

Answer to question No. 7: \$125.00. Yes. E. L. Knight and William B. Benton.

Answer to question No. 8: Yes, February 19, 1903. By walking over this land.

Answer to question No. 9: By the survey corners. Southeast quarter, Section 10, Tp. 39, North of

Range 3 East, Boise Meridian.

Answer to question No. 10: 1,600,000 feet. \$1,500.00.

Answer to question No. 11: No. From estimate of locators.

Answer to question No. 12: May log it myself or sell it. Do not know now.

Answer to question No. 13: No. [3402—32]

Answer to question No. 14: No.

Answer to question No. 15: I suppose Orofino, Idaho, or Ahsahka, Idaho.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: Made it farming. 2 years.

Answer to question No. 18; Yes. Lewiston National Bank, Lewiston, Idaho.

Plaintiff's Exhibit No. 6-b: Receiver's receipt No. 4377, dated June 5, 1903.

Plaintiff's Exhibit No. 6-a: Final certificate No. 4377, dated June 5, 1903.

Plaintiff's Exhibit No. 6-r: Certified copy of patent, dated August 3, 1904, granting to Soren Hansen the land described in Exhibit No. 6-q.

Plaintiff's Exhibit No. 6-s: Original deed dated February 17, 1906, made by Soren Hansen and wife to, for the land described in Plaintiff's Exhibit No. 6-q. This deed is not recorded. Consideration \$1.00.

Plaintiff's Exhibit No. 6-u: Original deed, dated March 5, 1909, made by Soren Hansen and wife to William F. Kettenbach, conveying the land described in Plaintiff's Exhibit No. 6-q. This deed is not recorded. Consideration \$1.00.

Plaintiff's Exhibit No. 6-t: Original deed, dated May 16, 1908, made by Soren Hansen and wife, conveying to E. W. Thatcher the land described in Plaintiff's Exhibit No. 6-q. This deed is not recorded. Consideration \$1,157.50.

**Plaintiff's Exhibits Nos. 7 and 7-a to 7-n, Inclusive,
Relate to the Application and Entry of William
McMillan.**

Plaintiff's Exhibit No. 7: William McMillan. Occupation, rancher. Sworn statement dated and filed April [3403—33] 25, 1904, for entry of the Southeast quarter of Section 21, in Tp. 39, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 7-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 7-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 7-c: Proof of publication.

Plaintiff's Exhibit No. 7-d: Notice for publication.

Plaintiff's Exhibit No. 7-e: Testimony of witness Edwin Bliss given at final proof, July 18, 1904.

Plaintiff's Exhibit No. 7-f: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 7-g: Testimony of William Dwyer given at final proof, July 18, 1904.

Plaintiff's Exhibit No. 7-h: Cross-examination of witness William Dwyer at final proof.

Plaintiff's Exhibit No. 7-i: Certificate of naturalization of William McMillan.

Plaintiff's Exhibit No. 7-j: Answers to questions Nos. 5, 12, 13, 14 and 15, given by William McMillan at final proof, July 18, 1904.

Answer to question No. 5: October, 1903 and July

9, 1904. Went to the corner posts and across each 40 acre tract.

Answer to question No. 12: \$1,000.00.

Answer to question No. 13: No.

Answer to question No. 14: I do.

Answer to question No. 15: Not any.

Plaintiff's Exhibit No. 7-k: Answers given by William McMillan on cross-examination at final proof to questions Nos. 6, 7, 10, 12, 13 to 18, inclusive.

Answer to question No. 6: By talking to locators and others.

Answer to question No. 7: Yes. William Dwyer—\$100.00.

Answer to question No. 10: 1,200,000 feet. \$1,000.00.

[3404—34]

Answer to question No. 12: I expect to sell it when I can get something out of it. Too old to cut it myself.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: I do not know of any market for it just now.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: I saved it from my earnings. Six months.

Answer to question No. 18: No.

Plaintiff's Exhibit No. 7-l: Receiver's receipt No. 4784, dated July 18, 1904.

Plaintiff's Exhibit No. 7-m: Final certificate No. 4784, dated July 18, 1904.

Plaintiff's Exhibit No. 7-n: Certified copy of pat-

ent dated December 31, 1904, granting to William McMillan the land described in Plaintiff's Exhibit No. 7. [3405—35]

Plaintiff's Exhibits Nos. 8-a to 8-l, Inclusive Relate to the Application and Entry of Chas. Carey.

Plaintiff's Exhibit No. 8-a: Chas. Carey. Occupation, jeweler. Sworn statement dated and filed August 23, 1904, for entry of the North half of the Northeast quarter and the North half of the Northwest quarter of Section 15, Tp. 38, Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 8-b: Duplicate of sworn statement.

Plaintiff's Exhibit No. 8-c: Notice for publication.

Plaintiff's Exhibit No. 8-d: Final certificate No. 4943, dated November 18, 1904.

Plaintiff's Exhibit No. 8-e: Receiver's receipt No. 4943, dated November 18, 1904.

Plaintiff's Exhibit No. 8-f: Cross-examination at final proof of witness Melvern C. Scott.

Plaintiff's Exhibit No. 8-g: Receipt:

Lewiston, Nov. 18, 1904.

Received of Charles Carey \$150.00 in full for location fees.

WILLIAM DWYER.

Plaintiff's Exhibit No. 8-h: Answers given by Charles Carey to questions Nos. 4, 5, 12, 13, 14 and 15, at final proof, November 18, 1904.

Answer to question No. 4: Yes.

Answer to question No. 5: From July 20 to August

18— '04—was over the land on foot—camped on the ground.

Answer to question No. 12: \$1,500.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No. [3406—36]

Plaintiff's Exhibit No. 8-i: Answers of Charles Carey to questions Nos. 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 18 given on cross-examination at final proof.

Answer to question No. 5: Cigar dealer—myself.

Answer to question No. 6: Through Mr. Wm. Dwyer.

Answer to question No. 7: Yes. Wm. Dwyer.
\$150.00.

Answer to question No. 8: Yes—went to see the timber with M. C. Scott and Wm. Dwyer.

Answer to question No. 10: One and one-half million
—\$1,500.00.

Answer to question No. 11: No—was told by the locator.

Answer to question No. 12: Keep it for my own use.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: Lewiston.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: Earned it in my business— 12 years.

Answer to question No. 18: Yes—Idaho Trust Company.

Plaintiff's Exhibit No. 8-j: Answers of witness William Dwyer to questions Nos. 10 and 11, at final proof, November 18, 1904.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 8-k: Answers of witness William Dwyer to questions Nos. 5, 6, 7 and 8 on cross-examination.

Answer to question No. 5: State of Idaho, and myself.

Answer to question No. 6: About six months.

Answer to question No. 7: Good.

Answer to question No. 8: Yes.

Plaintiff's Exhibit No. 8-l: Testimony of witness [3407—37] Melvern C. Scott at final proof, November 18, 1904.

Plaintiff's Exhibits Nos. 9 and 9-a to 9-n, Inclusive, Relate to the Application and Entry of Mamie P. White.

Plaintiff's Exhibit No. 9: Mamie P. White. Occupation, housewife. Sworn statement dated and filed April 25th, 1904, for entry of the North half of the South half of Section 14, Tp. 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 9-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 9-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 9-c: Proof of publication.

Plaintiff's Exhibit No. 9-d: Notice for publication.

Plaintiff's Exhibit No. 9-e: Answers of witness William Dwyer to questions Nos. 10 and 11 at final proof, July 14, 1904.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 9-f: Cross-examination of

witness William Dwyer at final proof.

Plaintiff's Exhibit No. 9-g: Testimony of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 9-h: Cross-examination of Edwin Bliss at final proof.

Plaintiff's Exhibit No. 9-i: Answers given by Mamie P. White at final proof, July 14, 1904, to questions Nos. 5 and 12. [3408—38]

Answer to question No. 5: October 13-1903—went over the land on foot.

Answer to question No. 12: I have been told it is worth about \$1.00 per M.

Plaintiff's Exhibit No. 9-j: Affidavit of Mamie P. White dated July 14, 1904, in effect the same as statement made in sworn statement.

Plaintiff's Exhibit No. 9-k: Answers to questions Nos. 6, 7, 8 and 10 to 18 inclusive, given by Mamie P. White on cross-examination at final proof.

Answer to question No. 6: Through my husband and Mr. Dwyer.

Answer to question No. 7: Yes—William Dwyer—\$100.00.

Answer to question No. 8: Yes—October 13, '03, went to see the timber and land—my husband and Mr. Dwyer.

Answer to question No. 10: I was told—about one and one-half million feet—about \$1,000.00.

Answer to question No. 11: No—through the locator.

Answer to question No. 12: Keep it for the present—and use it for my own benefit.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: Lewiston—I guess.

Answer to question No. 16: Yes—Yes.

Answer to question No. 17: From my husband—he gave it to me as a present last October—received the money today.

Answer to question No. 18: No—my husband has.

Plaintiff's Exhibit No. 9-l: Receiver's receipt No. 4777, dated July 14, 1904.

Plaintiff's Exhibit No. 9-m: Final certificate No. 4777, dated July 14, 1904.

Plaintiff's Exhibit No. 9-n: Certified copy of patent, [3409—39] dated December 31, 1904, granting to Mamie P. White the land described in Plaintiff's Exhibit No. 9.

**Plaintiff's Exhibits Nos. 10-a to 10-q, Inclusive,
Relate to the Application and Entry of Charles
S. Myers.**

Plaintiff's Exhibit No. 10-a: Chas. S. Myers. Occupation, farmer. Sworn statement dated and filed October 30, 1905, for entry of the Northwest quarter of Section 29 in Tp. 38, North of Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 10-b: Affidavit of Chas. S. Myers, dated October 30, 1905, in which he swears that since August 30, 1890, he has not acquired title to nor is he claiming under any public land laws, other than the mineral land laws, an amount of land, which together with the land he was entering then, will exceed 320 acres, except his homestead entry.

Plaintiff's Exhibit No. 10-c: Duplicate of sworn statement.

Plaintiff's Exhibit No. 10-d: Nonmineral affidavit.

Plaintiff's Exhibit No. 10-e: Answers of Charles S. Myers to questions Nos. 5, 12, 13, 14 and 15 given at final proof, January 22, 1906.

Answer to question No. 5: October 28, 1905—went over the land on foot.

Answer to question No. 12: One thousand dollars.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No. [3410—40]

Plaintiff's Exhibit No. 10-f: Testimony of witness Dominick Cameron at final proof.

Plaintiff's Exhibit No. 10-g: Answers of witness Harvey J. Steffey to questions Nos. 3, 10 and 11, given at final proof, January 22, 1906.

Answer to question No. 3: About December 15, 1905—on foot.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 10-h: Answers to questions Nos. 5 to 8 and 10 to 18 inclusive, given by Charles S. Myers on cross-examination at final proof.

Answer to question No. 5: Farming and running a sawmill—all I could make.

Answer to question No. 6: Through H. J. Steffey.

Answer to question No. 7: Yes—to H. J. Steffey—\$100.00.

Answer to question No. 8: Yes—October 28, 1905, went to see the timber with H. J. Steffey.

Answer to question No. 10: 2 million feet—\$1,000.00.

Answer to question No. 11: Yes.

Answer to question No. 12: Hold it for my own use and benefit.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: Don't know.

Answer to question No. 16: Yes—yes.

Answer to question No. 17: I borrowed it—today—from H. J. Steffey.

Answer to question No. 18: No.

Plaintiff's Exhibit No. 10-i: Cross-examination of Dominick Cameron at final proof.

Plaintiff's Exhibit No. 10-j: Answers of Harvey J. [3411—41] Steffey to questions Nos. 7 and 8, given on cross-examination at final proof.

Answer to question No. 7: Good.

Answer to question No. 8: I think he has.

Plaintiff's Exhibit No. 10-k: Notice for publication.

Plaintiff's Exhibit No. 10-l: Proof of publication.

Plaintiff's Exhibit No. 10-m: Certificate of H. V. A. Ferguson, Special Agent, G. L. O., dated January 26th, 1906, in which he certifies that the notice of intention to make proof furnished to the Special Agent by Charles S. Myers was lost or destroyed when the Land Office was removed to its new quarters, and cannot be attached to these papers; and that no complaints of fraud have been received from the neighborhood and that he knows of no fact that tends to impeach the good faith of the entryman.

Plaintiff's Exhibit No. 10-n: Receiver's receipt No. 5268, dated January 22, 1906.

Plaintiff's Exhibit No. 10-o: Final certificate No.

5268, dated January 22, 1906.

Plaintiff's Exhibit No. 10-p: Certified copy of patent dated September 11, 1907, granting to Charles S. Myers the land described in Plaintiff's Exhibit No. 10-a.

Plaintiff's Exhibit No. 10-q: Certified copy of warranty deed made and executed March 21, 1906, by Charles S. Myers and Jannie, his wife, conveying to William F. Kettenbach and George H. Kester in fee simple the land described in Plaintiff's Exhibit No. 10-a. Consideration in deed \$1,000.00 Said deed was filed for record at the request of the Lewiston National Bank, March 26, 1906.

**Plaintiff's Exhibits Nos. 11 and 11-a to 11-q,
Inclusive, Relate to the Application and Entry
of Jannie Myers. [3412—42]**

Plaintiff's Exhibit No. 11: Affidavit of Jannie Myers, dated March 19, 1906, to the effect that she is the person applying to enter the West half of the Southwest quarter of Section 25 of Tp. 38, North of Range 5 East, Boise Meridian. And that since August 30, 1890 she has not acquired title to nor is she claiming under any of the public land laws, other than the mineral land law, an amount of land which together with the land above described will exceed in the aggregate 320 acres.

Plaintiff's Exhibit No. 11-a: Jannie Myers. Occupation, housewife. Sworn statement dated and filed March 19, 1906, for the entry of the West half of the Southwest quarter of Section 25 in Tp. 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 11-b: Duplicate of sworn statement.

Plaintiff's Exhibit No. 11-c: Nonmineral affidavit.

Plaintiff's Exhibit No. 11-d: Affidavit of Jannie Myers sworn to before the Register of the Land Office at Lewiston, March 19, 1906, to the effect that she is the person seeking to acquire the title to the land described in Plaintiff's Exhibit No. 11-a; that she now has the required amount, viz., the sum of \$200.00, and that the said sum is her own and exclusive money, and not the money of her husband or any other person, and that she will have the required amount of her own money to purchase the said land at the time she submits her proof for the same; that she has entered the said land for her exclusive use and benefit and not for the benefit of her husband, and not for any other person, syndicate or corporation; that she desires to avail herself of said land solely for her own use and benefit. [3413—43]

Plaintiff's Exhibit No. 11-e: Answers to questions Nos. 13, 14 and 15 given by Jannie Myers at final proof, June 6, 1906.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 11-f: Answers given by witness William Dwyer to questions Nos. 10 and 11 at final proof, June 6, 1906.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 11-g: Answers of witness

Harvey J. Steffey to questions Nos. 10 and 11 at final proof, June 6, 1906.

Answer to question No. 10: No.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 11-h: Answers given by Jannie Myers to questions Nos. 6 and 7 and 10 to 14 inclusive and 16, 17 and 18 on cross-examination at final proof.

Answer to question No. 6: Through Mr. Steffey.

Answer to question No. 7: Yes—to H. J. Steffey—\$100.00.

Answer to question No. 10: Three or four hundred thousand feet from 75¢ to \$1.00 per M.

Answer to question No. 11: No—took other people's word for it.

Answer to question No. 12: I expect to keep it for awhile and sell it when I can get a good price for it.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 16: Yes—Yes.

Answer to question No. 17: I boarded mill-hands and school teachers. Part for some time and part just got lately.

Answer to question No. 18: Yes. Lewiston National Bank. [3414—44]

Plaintiff's Exhibit No. 11-i: Answers of witness Harvey J. Steffey to questions Nos. 7 and 8 on cross-examination at final proof.

Answer to question No. 7: Good.

Answer to question No. 8: Yes:

Plaintiff's Exhibit No. 11-j: Answer of witness William Dwyer to question No. 5 on cross-examina-

tion at final proof.

Answer to question No. 5: Myself.

Plaintiff's Exhibit No. 11-k: Notice for publication, dated March 19, 1906. Jannie Myers names as witnesses Harvey J. Steffey, William J. White, William Dwyer and Charles Myers.

Plaintiff's Exhibit No. 11-l: Proof of publication.

Plaintiff's Exhibit No. 11-m: Receiver's receipt No. 5419, dated June 6, 1906.

Plaintiff's Exhibit No. 11-n: Final certificate No. 5419, dated June 6, 1906.

Plaintiff's Exhibit No. 11-o: Notice for publication dated March 19, 1906, in which the entrywoman names Harvey J. Steffey, William J. White, William Dwyer and Charles Myers as witnesses. On the back of Exhibit No. 11-o is a certificate by H. B. A. Furgeson, Special Agent, G. L. O., dated April 6, 1906, to the effect that he has made inquiry into the timber claim of Jannie Myers; that he is informed by the U. S. Postmaster at Frasier, Idaho, that claimant is a married woman, being the wife of a resident of Frasier who is well to do; that she is able to buy the land herself, and that in his opinion she is seeking to acquire title in good faith, and for her own individual use and benefit; he further certifies that he knows of [3415—45] no reason why final receipt should not issue if the proof papers are regular and satisfactory on their face.

Plaintiff's Exhibit No. 11-p: Certified copy of warranty deed made and executed by Jannie Myers and her husband, Charles S., July 11, 1906, conveying to George H. Kester and William F. Kettenbach

in fee simple the title to the land described in Plaintiff's Exhibit No. 11-a. The said deed was filed for record July 28, 1906 at the request of Lewiston National Bank. Consideration in deed, \$450.00.

Plaintiff's Exhibit No. 11-q: Certified copy of patent dated September 11, 1907, granting to Jannie Myers the land described in Plaintiff's Exhibit No. 11-a.

**Plaintiff's Exhibits Nos. 12-a to 12-l, Inclusive,
Relate to the Application and Entry of Joel H.
Benton.**

Plaintiff's Exhibit No. 12-a: Joel H. Benton. Occupation, merchant. Sworn statement dated and filed August 28, 1902, for entry of the South half of the Southwest quarter and the South half of the Southeast quarter of Section 15 in Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 12-b: Duplicate of sworn statement.

Plaintiff's Exhibit No. 12-c: Answers given by Joel H. Benton to questions Nos. 4, 5, 12, 13, 14 and 15 at final proof, November 21, 1902.

Answer to question No. 4: Yes.

Answer to question No. 5: August 20 and November 7, 1902, by walking over the land. [3416—46]

Answer to question No. 12: \$2,500.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 12-d: Answers given by Joel H. Benton to questions Nos. 5, 6, 7, 8, 10, 11, 12,

13, 14, 15, 16, 17 and 18 on cross-examination at final proof.

Answer to question No. 5: Salesman. R. Grostein, \$60.00 per mo.

Answer to question No. 6: W. A. Smith told me about it.

Answer to question No. 7: Yes. W. A. Smith. \$50.00.

Answer to question No. 8: Yes. Aug. 20 and Nov. 7, 1902, by walking over the land with W. A. Smith.

Answer to question No. 10: 2,000.000 feet. \$2,500.00.

Answer to question No. 11: No. Guessed at it.

Answer to question No. 12: Keep it for the present.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: Lewiston, Idaho.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: Earned it in selling goods. One day.

Answer to question No. 18: Yes. Lewiston National Bank, Lewiston.

Plaintiff's Exhibit No. 12-e: Testimony of William B. Benton given at final proof.

Plaintiff's Exhibit No. 12-f: Testimony of William B. Benton given on cross-examination at final proof.

Plaintiff's Exhibit No. 12-g: Testimony of Walter A. Smith at final proof.

Plaintiff's Exhibit No. 12-h: Receiver's receipt [3417—47] No. 4055, dated November 21, 1902.

Plaintiff's Exhibit No. 12-i: Final certificate No.

4055, dated November 21, 1902.

Plaintiff's Exhibit No. 12-j: Cross-examination of Walter A. Smith on final proof.

Plaintiff's Exhibit No. 12-k: Certified copy of patent dated February 25, 1904, granting to Joel H. Benton the land described in Plaintiff's Exhibit No. 12-a.

Plaintiff's Exhibit No. 12-l: Certified copy of warranty deed made and executed by Joel H. Benton and wife, December 29, 1902, conveying to C. W. Robnett, in fee simple the land described in Plaintiff's Exhibit No. 12-a; consideration \$1,600.00, and acknowledged in the presence of Otto Kettenbach. Recorded April 27, 1903.

**Plaintiff's Exhibits Nos. 13 and 13-a to 13-p,
Inclusive, Relate to the Application and Entry
of Frederick W. Newman.**

Plaintiff's Exhibit No. 13: Frederick W. Newman. Occupation, lumberman. Sworn statement dated and filed March 25, 1903, for entry of the South half of the Northeast quarter and the East half of the Southeast quarter of Section 23, Tp. 39, North of Range 3 East, Boise meridian.

Plaintiff's Exhibit No. 13-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 13-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 13-c: Notice for publication. Witnesses named therein: Lon E. Bishop, James C. Evans, Charley Smith, Fred Emery.

[3418—48]

Plaintiff's Exhibit No. 13-d: Proof of publication.

Plaintiff's Exhibit No. 13-e: Certified copy of

Fred A. Newman's declaration of intention to become a citizen of the United States.

Plaintiff's Exhibit No. 13-f: Answers given by Frederick W. Newman to questions Nos. 5, 12, 13, 14 and 15 at final proof, June 17, 1903.

Answer to question No. 5: About March 8, 1903. By walking over this tract of land.

Answer to question No. 12: \$1,000.00.

Answer to question No. 13: No.

Answer to question No. 14: Yes.

Answer to question No. 15: No.

Plaintiff's Exhibit No. 13-g: Testimony of witness Lon E. Bishop at final proof.

Plaintiff's Exhibit No. 13-h: Answers given by witness Fred Emery to questions Nos. 3, 10 and 11 at final proof, June 17, 1903.

Answer to question No. 3: About March 8, 1903, I walked over it.

Answer to question No. 10: I do not.

Answer to question No. 11: No.

Plaintiff's Exhibit No. 13-i: Answers given by witness Fred Emery to questions Nos. 7 and 8 on cross-examination at final proof.

Answer to question No. 7: Good.

Answer to question No. 8: Yes.

Plaintiff's Exhibit No. 13-j: Affidavit of Frederick W. Newman, dated June 17, 1903, to the effect that he did not make final proof upon his claim June 16, 1903, because he could not secure the attendance of the witnesses.

Plaintiff's Exhibit No. 13-k: Answers given by Frederick W. Newman to questions Nos. 5, 6, 7, 8,

10, 11, [3419—49] 12, 13, 14, 15, 16, 17 and 18 on cross-examination at final proof.

Answer to question No. 5: Warehouseman. Lewiston, Idaho. Kettenbach Company. \$70.00 per mo.

Answer to question No. 6: Through Fred Emery.

Answer to question No. 7: Yes. Fred Emery. \$100.00.

Answer to question No. 8: Yes. March 8, 1903. By walking over it with Fred Emery.

Answer to question No. 10: 1,500,000 ft. \$1,000.00.

Answer to question No. 11: Yes.

Answer to question No. 12: I expect to hold the land. I may sell the timber.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 15: Lewiston, Idaho.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: I earned part and borrowed part.

Answer to question No. 18: No.

Plaintiff's Exhibit No. 13-l: Answers given by witness Lon E. Bishop to questions Nos. 3, 5, 6, 7 and 8 on cross-examination at final proof.

Answer to question No. 3: Walked over this land about the 8th of March, 1903.

Answer to question No. 5: Small and Emery of Lewiston, Idaho.

Answer to question No. 6: About one year.

Answer to question No. 7: All right.

Answer to question No. 8: Yes.

Plaintiff's Exhibit No. 13-m: Receiver's receipt

No. 4394, dated June 17, 1903.

Plaintiff's Exhibit No. 13-n: Final certificate No. 4394, dated June 17, 1903.

Plaintiff's Exhibit No. 13-o: Certified copy of patent dated August 3, 1904, granting to Frederick W. [3420—50] Newman the land described in Plaintiff's Exhibit No. 13.

Plaintiff's Exhibit No. 13-p: Certified copy of a warranty deed made and executed by Frederick W. Newman and wife, June 17, 1903, granting to William F. Kettenbach and George H. Kester in fee simple, the land described in Plaintiff's Exhibit No. 13. Said deed was recorded August 10, 1903, at the request of George H. Kester. Consideration of deed, \$1,000.00.

Plaintiff's Exhibits Nos. 14 and 14-a to 14-m, Inclusive, Relate to the Application and Entry of Daniel W. Greenburg.

Plaintiff's Exhibit No. 14: Daniel W. Greenburg. Occupation, reporter. Sworn statement dated and filed April 25, 1904, for the entry of the Southwest quarter of Section 17, in Tp. 39, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 14-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 14-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 14-c: Answers given by Daniel W. Greenburg to questions Nos. 5 and 12 at final proof, July 15, 1904.

Answer to question No. 5: October 13, 1903. Went over the land from each section corner.

Answer to question No. 12: \$1,000.00.

Plaintiff's Exhibit No. 14-d: Answers given by Daniel W. Greenburg to questions Nos. 7, 10, 12, 13, 14, 16 and 17 on cross-examination at final proof.

Answer to question No. 7: Yes. William Dwyer.
\$100.00. [3421—51]

Answer to question No. 10: 1,200,000 feet. \$1,000.00.

Answer to question No. 12: I expect to keep it and use it for my own benefit.

Answer to question No. 13: No.

Answer to question No. 14: No.

Answer to question No. 16: Yes. Yes.

Answer to question No. 17: Part of it is my earnings, and borrowed \$125.00 on my personal note.

Do not involve this land in any way as security.

Plaintiff's Exhibit No. 14-e: Testimony of witness William Dwyer at final proof.

Plaintiff's Exhibit No. 14-f: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 14-g: Proof of publication.

Plaintiff's Exhibit No. 14-h: Notice for publication.

Plaintiff's Exhibit No. 14-i: Testimony of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 14-j: Testimony of witness William Dwyer on cross-examination at final proof.

Plaintiff's Exhibit No. 14-k: Receiver's receipt No. 4780, dated July 15, 1904.

Plaintiff's Exhibit No. 14-l: Final certificate No. 4780, dated July 15, 1904.

Plaintiff's Exhibit No. 14-m: Certified copy of patent, dated December 31, 1904, granting to Daniel W.

Greenburg the land described in Plaintiff's Exhibit No. 14.

Plaintiff's Exhibits Nos. 15 and 15-a to 15-n, Inclusive, Relate to the Application and Entry of Charles Dent.

Plaintiff's Exhibit No. 15: Charles Dent. Occupation, [3422 — 52] farmer. Sworn statement dated and filed April 2, 1903, for entry of the North half of the Northeast quarter and the North half of the Northwest quarter of Section 14 in Township 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 15-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 15-b: Receiver's receipt No. 4404, dated June 23, 1903.

Plaintiff's Exhibit No. 15-c: Final Certificate No. 4404, dated June 23, 1903.

Plaintiff's Exhibit No. 15-d: Nonmineral affidavit.

Plaintiff's Exhibit No. 15-e: Notice for publication. Persons named therein as witnesses: Fred Emery, George White, Charles Smith and James C. Evans.

Plaintiff's Exhibit No. 15-f: Testimony of witness Charles Smith given at final proof, June 23, 1903. Answer to question 3 thereof: April 25, 1903. By walking over it.

Plaintiff's Exhibit No. 15-g: Cross-examination of witness Charles Smith at final proof.

Plaintiff's Exhibit No. 15-h: Testimony of Charles Dent given at final proof, June 23, 1903.

Answer to question No. 5 thereof: March 10, 1903, by walking over the land.

Answer to question No. 12 thereof: \$2,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 15-i: Cross-examination of Charles Dent at final proof.

Answer to question No. 8 thereof: **Yes.** **March 10,**
1903, with Charles Smith.

Answer to question No. 10 thereof: 2,000,000 feet.
\$2,000.00. **[3423—53]**

Answer to question No. 11 thereof: Yes.

Answer to question No. 12 thereof: Get the timber
off.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned part of
it on the farm, and borrowed the balance, gave
no security on this land.

Plaintiff's Exhibit No. 15-j: Testimony of witness
Fred Emery at final proof.

Answer to question No. 3 thereof: March 10, 1903.

By walking over the land.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 15-k: Cross-examination
of witness Fred Emery.

Answer to question No. 7 thereof: Good.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 15-l: Proof of publication.

Plaintiff's Exhibit No. 15-m: Certified copy of

patent dated August 3, 1904, granting to Charles Dent the land described in Plaintiff's Exhibit No. 15.

Plaintiff's Exhibit No. 15-n: Certified copy of warranty deed made and executed by Charles Dent June 23, 1903, conveying to William F. Kettenbach and George H. Kester in fee simple, the land described in Plaintiff's Exhibit No. 15; consideration named therein \$1,000.00. Deed recorded at request of George H. Kester, August 10, 1903.

Plaintiff's Exhibits Nos. 16 and 16-a to 16-m, Inclusive, Relate to the Application and Entry of Edna P. Kester. [3424—54]

Plaintiff's Exhibit No. 16: Edna P. Kester. Occupation, housewife. Sworn statement dated and filed April 25, 1904, for the entry of the North half of the North half of Section 14, Township 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 16-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 16-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 16-c: Proof of publication.

Plaintiff's Exhibit No. 16-d: Testimony of witness William Dwyer given at final proof, July 13, 1904.

Plaintiff's Exhibit No. 16-e: Cross-examination of witness William Dwyer at final proof.

Plaintiff's Exhibit No. 16-f: Testimony of witness Edwin Bliss given at final proof July 13, 1904.

Plaintiff's Exhibit No. 16-g: Cross-examination of Edwin Bliss at final proof.

Plaintiff's Exhibit No. 16-h: Testimony of Edna P. Kester given at final proof, July 13, 1904.

Plaintiff's Exhibit No. 16-i: Cross-examination of Edna P. Kester at final proof.

Plaintiff's Exhibit No. 16-j: Affidavit of Edna P. Kester made July 13, 1904, to the effect that she proposes to purchase the land described in the sworn statement with her own money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, directly or indirectly, in or from a former entry made by any person [3425—55] or association of persons.

Plaintiff's Exhibit No. 16-k: Receiver's receipt No. 4773, dated July 13, 1904.

Plaintiff's Exhibit No. 16-l: Final certificate No. 4773, dated July 13, 1904.

Plaintiff's Exhibit No. 16-m: Certified copy of patent dated December 31, 1904, granting to Edna P. Kester the land described in Plaintiff's Exhibit No. 16.

Plaintiff's Exhibits Nos. 17 and 17-a to 17-m, Inclusive, Relate to the Application and Entry of Elizabeth White.

Plaintiff's Exhibit No. 17: Elizabeth White. Occupation, housekeeper. Sworn statement dated and filed April 25, 1904, for the entry of the South half of the North half of Section 23, Tp. 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 17-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 17-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 17-c: Proof of publication.

Plaintiff's Exhibit No. 17-d: Notice for publication.

Plaintiff's Exhibit No. 17-e: Testimony of witness Edwin Bliss given at final proof July 14, 1904.

Plaintiff's Exhibit No. 17-f: Cross-examination of Edwin Bliss at final proof.

Plaintiff's Exhibit No. 17-g: Testimony of William Dwyer given at final proof, July 14, 1904.

Plaintiff's Exhibit No. 17-h: Cross-examination of William Dwyer at final proof.

Plaintiff's Exhibit No. 17-i: Testimony of Elizabeth [3426—56] White given at final proof, July 14, 1904.

Answer to question No. 12 thereof: \$1,000.00 or \$1,200.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 17-j: Cross-examination of Elizabeth White at final proof.

Answer to question No. 6 thereof: Through William Dwyer.

Answer to question No. 7 thereof: Yes. William Dwyer. \$100.00.

Answer to question No. 10 thereof: 1,000,000 feet, \$1,000.00 or \$1200.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: From my husband's estate. One year.

Answer to question No. 18 thereof: Yes. Lewiston National Bank, Lewiston, Idaho.

Plaintiff's Exhibit No. 17-k: Receiver's receipt No. 4776 dated July 14, 1904.

Plaintiff's Exhibit No. 17-l: Final certificate No. 4776 dated July 14, 1904.

Plaintiff's Exhibit No. 17-m: Certified copy of patent dated December 31, 1904, granting to Elizabeth White the land described in Plaintiff's Exhibit No. 17.

Plaintiff's Exhibits Nos. 18 and 18-a to 18-o, Inclusive, Relate to the Application and Entry of Van V. Robertson

Plaintiff's Exhibit No. 18: Van V. Robertson. Occupation, storekeeper. Sworn statement dated and filed [3427—57] February 24, 1903, for the entry of the Southwest quarter of Section 10, in Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 18-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 18-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 18-c: Testimony of Van V. Robertson given at final proof May 20, 1903.

Answer to question No. 5 thereof: February 10, 1903, and May 5, 1903, I walked over it and looked at timber.

Answer to question No. 12 thereof: \$1600.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 18-d: Cross-examination of Van V. Robertson at final proof.

Answer to question No. 7 thereof: I did. Edward L. Knight, \$100.00.

Answer to question No. 8 thereof: Yes. February 10, and May 15, 1903. Walked over it.

Answer to question No. 10 thereof: 2,000,000 feet. \$1600.00.

Answer to question No. 12 thereof: I expect to do the best I can with it. Do not know at present.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: No market at present.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: Money I made from my business. Two years.

Answer to question No. 18 thereof: Yes. Bank of Camas Prairie, Grangeville, Idaho and the Lewiston National Bank, Lewiston, Idaho.

Plaintiff's Exhibit No. 18-f: Proof of publication.
[3428—58]

Plaintiff's Exhibit No. 18-g: Testimony of witness Edward L. Knight given at final proof.

Plaintiff's Exhibit No. 18-h: Cross-examination of witness Edward L. Knight given at final proof.

Plaintiff's Exhibit No. 18-i: Testimony of William B. Benton at final proof.

Plaintiff's Exhibit No. 18-j: Cross-examination of William B. Benton at final proof.

Plaintiff's Exhibit No. 18-k: Notice of publication.

Plaintiff's Exhibit No. 18-l: Receiver's receipt No. 4352, dated May 20, 1903.

Plaintiff's Exhibit No. 18-m: Final certificate No. 4352, dated May 20, 1903.

Plaintiff's Exhibit No. 18-n: Certified copy of patent dated August 3, 1904, granting to Van V. Robertson the land described in Plaintiff's Exhibit No. 18.

Plaintiff's Exhibit No. 18-o: Certified copy of mortgage made and executed the 20th day of May, 1903, by Van V. Robertson and wife, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 18. Secure a promissory note dated May 20th, 1903, signed Van V. Robertson in the sum of \$500.00 and payable to the order of Clarence W. Robnett in one year after date with interest at the rate of one per cent per month until paid; and an additional sum of \$50.00 as attorneys' fees if suit be brought to collect said note. Mortgage recorded at the request of C. W. Robnett, Feb. 15, 1904.

Note: Plaintiff's Exhibit No. 18-e missing.

Plaintiff's Exhibits Nos. 19 and 19-a to 19-q, Inclusive, Relate to the Application and Entry of Frank J. Bonney.

Plaintiff's Exhibit No. 19: Frank J. Bonney. Occupation, ———. Sworn statement dated and filed June 27, 1906, for the entry of the East half of the Southeast quarter of Section 33, and the Northwest quarter [3429—59] of the Southwest quarter of Section 34, Tp. 37, North of Range 5 East, Boise

Meridian, and lot 1 of Section 4, Tp. 36, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 19-a: Nonmineral affidavit.

Plaintiff's Exhibit No. 19-b: Testimony of Frank J. Bonney given at final proof, October 11, 1906.

Answer to question No. 5 thereof: On or about June 22, 1906. Walked over the land.

Answer to question No. 12 thereof: \$1,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 19-c: Testimony of witness Charles H. Erwin given at final proof.

Plaintiff's Exhibit No. 19-d: Testimony of witness John Gaffney given at final proof.

Plaintiff's Exhibit No. 19-e: Cross-examination of Frank J. Bonney at final proof.

Answer to question No. 6 thereof: Through John Gaffney.

Answer to question No. 7 thereof: No.

Answer to question No. 8 thereof: June 22, 1906.

Went over the land with my witnesses.

Answer to question No. 10 thereof: 1,000,000. Value \$1,000.00.

Answer to question No. 11 thereof: No—have worked in sawmills and used my own judgment.

Answer to question No. 12 thereof: To sell it if I get what it is worth, or keep it for my own use.

Answer to question No. 13 thereof: No—have heard of people.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Don't know.

Answer to question No. 10 thereof: Yes. Yes.

Answer to question No. 17 thereof: From my trade.

Sold [3430—60] a team of horses—part of it over a year, balance about a month.

Plaintiff's Exhibit No. 19-f: Affidavit of Frank J. Bonney to the effect that he has not acquired title to nor claims under any public land laws of the United States, other than the mineral land laws, an amount of land which together with the land he is entering will exceed in the aggregate 320 acres.

Plaintiff's Exhibit No. 19-g: Duplicate of sworn statement.

Plaintiff's Exhibit No. 19-h: Cross-examination of witness John Gaffney at final proof.

Plaintiff's Exhibit No. 19-i: Cross-examination of witness Charles H. Erwin at final proof.

Plaintiff's Exhibit No. 19-j: Notice for publication.

Plaintiff's Exhibit No. 19-k: Duplicate of notice of publication. On the back of notice of publication is the certificate of F. M. Goodwin, Chief of Field Division, General Land Office, dated October 11, 1906, to the effect that he has made some inquiry in regard to the claimant Frank J. Bonney, but secured no information which would warrant the suspension of final proof for investigation.

Plaintiff's Exhibit No. 19-l: Affidavit for publication.

Plaintiff's Exhibit No. 19-m: Notice for publication.

Plaintiff's Exhibit No. 19-n: Receiver's receipt No. 5756, dated October 11, 1906.

Plaintiff's Exhibit No. 19-o: Final certificate No. 5756, dated October 11, 1906.

Plaintiff's Exhibit No. 19-p: Certified copy of patent dated September 13, 1907, granting to Frank J. Bonney the land described in Plaintiff's Exhibit No. 19.

Plaintiff's Exhibit No. 19-q: Certified copy of a warranty deed made and executed by Frank J. Bonney and wife, December [3431—61] 20, 1906, granting to George H. Kester and W. F. Kettenbach in fee simple, the land described in Plaintiff's Exhibit No. 19. Consideration mentioned in the deed \$950.00. Deed filed for record at the request of William Dwyer, December 24, 1906.

Plaintiff's Exhibits Nos. 20 and 20-a to 20-o, Inclusive, Relate to the Application and Entry of Clinton E. Perkins.

Plaintiff's Exhibit No. 20-a: Clinton E. Perkins. Occupation, farmer.

Sworn statement dated and filed April 19, 1906 for the entry of lots 3 and 4 in Section 3 of Tp. 36, North of Range 5 East, and the South half of the Southwest quarter of Section 34, Tp. 37, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 20-b: Duplicate of sworn statement.

Plaintiff's Exhibit No. 20: Affidavit of Clinton E. Perkins dated April 19, 1906, that he has not acquired, nor is he claiming, under any public land law of the United States, other than the mineral land laws, an amount of land which together with the land described in Plaintiff's Exhibit No. 20-a will exceed

the aggregate of 320 acres.

Plaintiff's Exhibit No. 20-c: Nonmineral affidavit.

Plaintiff's Exhibit No. 20-d: Testimony of Clinton E. Perkins given at final proof, July 12, 1906.
[3432—62]

Answer to question No. 12 thereof: \$1,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 20-e: Testimony of witness Harvey J. Steffey at final proof.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 20-f: Testimony of witness William Dwyer given at final proof, July 12, 1906.

Answer to question No. 2 thereof: Yes.

Answer to question No. 3 thereof: May, 1906, last time. Went across it.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 20-g: Notice for publication, dated April 19, 1906. The persons named therein as witnesses are, Harvey J. Steffey, John Gaffney, William J. White and William Dwyer. On the back of Exhibit No. 20-g is certificate of H. V. A. Ferguson, Special Agent, G. L. O., dated July 3, 1906, that he has investigated this claim; that he is informed by the Postmaster at Frasier, Idaho that the applicant has means of his own and is seeking title in good faith; and he further certifies that he knows of no reason why final receipt should not issue.

Plaintiff's Exhibit No. 20-h: Proof of publication.

Plaintiff's Exhibit No. 20-i: Cross-examination of Clinton E. Perkins at final proof.

Answer to question No. 6: Through Harvey J. Steffey.

Answer to question No. 7 thereof: Yes. Harvey J. Steffey, \$200.00.

Answer to question No. 8 thereof: Yes. In April before applying and June 24, 1906. Walked over the land with Mr. Steffey.

Answer to question No. 10 thereof: Perhaps 1,000,000 feet [3433—63] \$1,000,00.

Answer to question No. 11 thereof: No—I am making a guess at it.

Answer to question No. 12 thereof: I expect to sell it if I get a chance and get enough for it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho, I suppose.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: Sold livestock for most of it. All of it for three weeks.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 20-j: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 5 thereof: Myself.

Plaintiff's Exhibit No. 20-k: Cross-examination of witness Harvey J. Steffey at final proof.

Answer to question No. 7 thereof: Good.

Answer to question No. 8 thereof: No, but think he has.

Plaintiff's Exhibit No. 20-l: Receiver's receipt No. 5475, dated July 12, 1906.

Plaintiff's Exhibit No. 20-m: Final certificate No. 5475, dated July 12, 1906.

Plaintiff's Exhibit No. 20-n: Certified copy of patent dated September 11, 1907, granting to Clinton E. Perkins the land described in Plaintiff's Exhibit No. 20-a.

Plaintiff's Exhibit No. 20-o: Certified copy of warranty deed made and executed by Clinton E. Perkins and wife, September 4, 1906, granting to George H. Kester in fee simple the land described in Plaintiff's Exhibit No. 20-a. Consideration mentioned in deed \$1250.00. The [3434—64] same was recorded at the request of the Lewiston National Bank, September 10, 1906.

Plaintiff's Exhibits Nos. 21 and 21-a to 21-k, Inclusive, Relate to the Application and Entry of Frances A. Justice.

Plaintiff's Exhibit No. 21: Frances A. Justice. Occupation, housewife.

Sworn statement dated and filed April 25, 1904, for the entry of Lots 3 and 4 and the East half of the Southwest quarter of Section 19, in Tp. 38, North of Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 21-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 21-b: Notice for publication.

Plaintiff's Exhibit No. 21-c: Testimony of Frances A. Justice given at final proof, July 13, 1904.

Answer to question No. 5 thereof: October 9, 1903.

Went over the land with Mr. Dwyer on foot.

Answer to question No. 12 thereof: I believe about 2,000 feet.

Answer to question No. 13 thereof: No. No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No. No.

Plaintiff's Exhibit No. 21-d: Cross-examination of Frances A. Justice at final proof.

Answer to question No. 6 thereof: From my son and William Dwyer.

Answer to question No. 7 thereof: Yes. To William Dwyer— [3435—65] \$100.00.

Answer to question No. 10 thereof: About 2,000,000 feet—\$2,000.00.

Answer to question No. 11 thereof: No—through information received from Mr. Dwyer.

Answer to question No. 12 thereof: Keep it for future use—for myself.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston.

Answer to question No. 16 thereof: I did—I do.

Answer to question No. 17 thereof: Sold fruit—one month in my possession.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 21-e: Testimony of witness William Dwyer given at final proof July 13, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 21-f: Testimony of witness Edwin Bliss given at final proof.

Plaintiff's Exhibit No. 21-g: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 21-h: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 7 thereof: All right.

Answer to question No. 8 thereof: I think she has.

Plaintiff's Exhibit No. 21-i: Receiver's receipt No. 4771 dated July 13, 1904.

Plaintiff's Exhibit No. 21-j: Final certificate No. 4771 dated July 13, 1904.

Plaintiff's Exhibit No. 21-k: Certified copy of patent dated December 31, 1904, granting to Frances A. Justice the land described in Plaintiff's Exhibit No. 21. [3436—66]

Plaintiff's Exhibits Nos. 22 and 22-a to 22-m, Inclusive, Relate to the Application and Entry of Geary Vanartsdalen.

Plaintiff's Exhibit No. 22: Geary Vanartsdalen. Occupation, rancher.

Sworn statement dated and filed October 31, 1903, for the entry of the Northeast quarter of Section 25, Tp. 37 North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 22-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 22-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 22-c: Notice for publication.

Plaintiff's Exhibit No. 22-d: Proof of publication.

Plaintiff's Exhibit No. 22-e: Cross-examination of Geary Vanartsdalen at final proof.

Answer to question No. 6 thereof: I was looking for timber land and found this piece of land.

Answer to question No. 7 thereof: No.

Answer to question No. 8 thereof: Yes. Alone. September 25, 1903 and January 9, 1904.

Answer to question No. 10 thereof: 1,500,000 feet. \$1500.00.

Answer to question No. 11 thereof: No. Guessed at it.

Answer to question No. 12 thereof: Keep it until I find a good market for it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned it farming, 2 years.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 22-f: Testimony of Geary [3437—67] Vanartsdalen given at final proof, January 11, 1904.

Answer to question No. 12 thereof: \$1500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 22-g: Testimony of witness Frank L. Miles given at final proof, January 11, 1904.

Plaintiff's Exhibit No. 22-h: Cross-examination of Frank L. Miles at final proof.

Plaintiff's Exhibit No. 22-i: Testimony of witness John Maloney given at final proof.

Plaintiff's Exhibit No. 22-j: Cross-examination of witness John Maloney at final proof.

Plaintiff's Exhibit No. 22-k: Receiver's receipt

No. 4641, dated January 11, 1904.

Plaintiff's Exhibit No. 22-l: Final certificate No. 4641, dated January 11, 1904.

Plaintiff's Exhibit No. 22-n: Certified copy of patent dated November 1, 1904, granting to Geary Vantardsalen the land described in Plaintiff's Exhibit No. 22.

Plaintiff's Exhibits Nos. 23 and 23-a to 23-i, Inclusive, Relate to the Application and Entry of Bertsel H. Ferris.

Plaintiff's Exhibit No. 23: Bertsel H. Ferris. Occupation, electrician.

Sworn statement dated and filed March 31, 1903, for the entry of Lot 3 and the Northwest quarter of the Southeast quarter and the North half of the Southwest quarter of Section 24, Tp. 39, North of Range 3 East, Boise Meridian. [3438—68]

Plaintiff's Exhibit No. 23-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 23-b: Cross-examination of Bertsel H. Ferris given at final proof, June 26, 1903.

Answer to question No. 6 thereof: W. B. Benton located me on this land.

Answer to question No. 7 thereof: Yes. W. B. Benton. \$100.00.

Answer to question No. 8 thereof: Yes.

Answer to question No. 10 thereof: 1,500,000 ft. \$1600.00.

Answer to question No. 11 thereof: No—guessed at it.

Answer to question No. 12 thereof: Hold it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: Earned most of it
in my trade, borrowed balance.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 23-c: Testimony of Bertsel
H. Ferris given at final proof, June 26, 1903.

Answer to question No. 12 thereof: \$1600.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Answer to question No. 5 thereof: Aug. 22, 1903, and
May 9, 1903. By walking over the land.

Plaintiff's Exhibit No. 23-d: Receiver's receipt
No. 4414, dated June 26, 1903.

Plaintiff's Exhibit No. 23-e: Final Certificate No.
4414, dated June 26, 1903.

Plaintiff's Exhibit No. 23-f: On letter-head of
Lewiston National Bank:

"Lewiston, Idaho, June 15, 1906.

Bertsel H. Ferris,

City. [3439—69]

Dear Sir:

Your note for \$728.75 and interest from June 26,
1903 is now very near 2 years past due, and now that
timber claims can be very easily disposed of, I must
insist that you make arrangements to meet your ob-
ligation at as early a date as possible.

Yours truly,

W. F. KETTENBACH."

Plaintiff's Exhibit No. 23-g: Promissory note.
"\$125.00 Lewiston, Idaho, March 31, 1903.

One year after date without grace, for value received, I promise to pay to the order of Curtis Thatcher at the Lewiston National Bank at Lewiston, Idaho, one hundred and twenty-five dollars in United States gold coin, with interest after date in like gold coin, at the rate of one per cent per month until paid. And if suit be instituted to collect this note or any part thereof, I promise to pay the additional sum of twenty-five dollars as attorney's fees in said suit.

BERTSEL H. FERRIS.

P. O. Lewiston, Id.

No. 27.

Due March 31, 1904.

Endorsed, C. W. Robnett. W. B. Benton."

Said note is stamped paid by stamp of Lewiston National Bank, Lewiston, Idaho, June 26, 1903.

Plaintiff's Exhibit No. 23-h: Certified copy of patent dated August 3, 1904, granting to Bertsel H. Ferris the land described in Plaintiff's Exhibit No. 23.

Plaintiff's Exhibit No. 23-i: Certified copy of a mortgage made and executed by Bertsel H. Ferris, June 26, [3440—70] 1903, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 23, to secure promissory note for \$728.75 of Bertsel H. Ferris, dated June 26, 1903, payable to the order of Clarence W. Robnett in one year without grace at the Lewiston National Bank with interest after date at the rate of one per cent per month until paid and an additional sum of \$75.00 to be paid as attorney's fees in case of suit to collect

the same. Said mortgage was recorded at the request of W. F. Kettenbach, July 1, 1903.

Plaintiff's Exhibits Nos. 24 and 24-a to 24-n, Inclusive, Relate to the Application and Entry of John E. Nelson.

Plaintiff's Exhibit No. 24: John E. Nelson: Occupation, druggist.

Sworn statement dated and filed February 24, 1903 for the entry of the Northeast quarter of Section 24 in Tp. 39, North of Range 2 East, Boise Meridian.

Plaintiff's Exhibit No. 24-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 24-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 24-c: Testimony of John E. Nelson given at final proof, May 22, 1903.

Answer to question No. 5 thereof: February 9 and

May 15, 1903. By walking over the land.

Answer to question No. 12 thereof: \$1600.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 24-d: Cross-examination of witness William B. Benton at final proof. [3441—71]

Plaintiff's Exhibit No. 24-e: Cross-examination of witness John E. Nelson at final proof, May 22, 1903.

Answer to question No. 6 thereof: W. B. Benton located me.

Answer to question No. 7 thereof: Yes. W. B. Benton. \$100.00.

Answer to question No. 8 thereof: Yes. February 9 and May 15, 1903.

Answer to question No. 10 thereof: 1,800,000 feet. \$1500.00.

Answer to question No. 11 thereof: No. Had it estimated.

Answer to question No. 12 thereof: Hold it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned it in my trade. About 11½ years.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 24-f: Testimony of Edward L. Knight given at final proof.

Plaintiff's Exhibit No. 24-g: Testimony of witness William B. Benton at final proof.

Plaintiff's Exhibit No. 24-h: Cross-examination of witness Edward L. Knight at final proof.

Plaintiff's Exhibit No. 24-i: Affidavit of Edward L. Knight, that he is the same Edward L. Knight erroneously published in the affidavit of publication as Edward S. Knight.

Plaintiff's Exhibit No. 24-j: Notice for publication.

Plaintiff's Exhibit No. 24-k: Proof of publication.

Plaintiff's Exhibit No. 24-l: Receiver's receipt No. 4359, dated May 22, 1903.

Plaintiff's Exhibit No. 24-m: Final certificate No. 4359, dated May 22, 1902. [3442—72]

Plaintiff's Exhibit No. 24-n: Certified copy of pat-

ent dated August 3, 1904, granting to John E. Nelson the land described in Plaintiff's Exhibit No. 24.

Plaintiff's Exhibits Nos. 25 and 25-a to 25-k, Inclusive, Relate to the Application and Entry of Charles W. Taylor.

Plaintiff's Exhibit No. 25: Charles W. Taylor: Occupation, farmer.

Sworn statement dated and filed April 25, 1904, for the entry of Lots 1 and 2 and the East half of the Northwest quarter of Section 30, Tp. 38, North of range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 25-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 25-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 26-c: Testimony of Charles W. Taylor given at final proof, July 11, 1904.

Answer to question No. 12 thereof: \$1200.00 to \$2,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 25-d: Cross-examination of Charles W. Taylor at final proof.

Answer to question No. 6 thereof; Through William Dwyer and Jackson O'Keefe.

Answer to question No. 7 thereof: Yes. William Dwyer—\$100.00.

Answer to question No. 8 thereof: Yes. Walked over the land with William Dwyer and Edwin Bliss, October, 1903.

Answer to question No. 10 thereof: About 2,000,000 feet. [3443—73] From \$1,200.00 to \$2,000.00.

Answer to question No. 11 thereof: No. Through information given from others.

Answer to question No. 12 thereof: Hold it for speculation.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho, at the present time.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned part of it and borrowed the balance. About 2 weeks.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 25-e: Testimony of witness William Dwyer given at final proof, July 11, 1904.

Plaintiff's Exhibit No. 25-f: Proof of publication.

Plaintiff's Exhibit No. 25-f: Notice for publication, dated April 25, 1904. Persons named therein as witnesses:—William Dwyer, Edgar J. Taylor, Lee B. Stansbury, Edwin Bliss.

Plaintiff's Exhibit No. 25-g: Receiver's receipt No. 4762 dated July 11, 1904.

Plaintiff's Exhibit No. 25-h: Final certificate No. 4762 dated July 11, 1904.

Plaintiff's Exhibit No. 25-i: Certified copy of patent dated December 31, 1904, granting to Charles W. Taylor the land described in Plaintiff's Exhibit No. 25.

Plaintiff's Exhibit No. 25-j: Promissory note made by C. W. Taylor and E. J. Taylor, dated July 11, 1904 in the sum of \$1100.00, payable to the order of J. O'Keefe in twelve months with interest at 8% per annum, and does further promise to pay \$50.00

as attorney's fees in event suit or action is commenced to collect the note.

Plaintiff's Exhibit No. 25-k: Affidavit: [3444—74]

“State of Idaho,
County of Ada,—ss.

I, Charles W. Taylor, do freely and voluntarily make the sworn statement regarding the circumstances attending my application to purchase a timber claim in the Lewiston Land District, being Lots 1 and 2 and the East half of the Northwest quarter of Section 30, Tp. 38, North of Range 6 East, made April 25, 1904. This land was to go to Jackson O'Keefe when I proved up. I was to get \$150.00 above all expenses for my claim. Mr. O'Keefe told me before I filed on my claim that he and George H. Kester were in together and that he was going to get some parties to take up timber claims for Kester. Mr. O'Keefe told me that if I would take up a timber claim he would guarantee me \$150.00 for it. Mr. O'Keefe wanted me to see Mr. Edgar H. Dammarell and Joseph H. Prentice and ask them if they would each file on a timber and stone claim, and that he would guarantee them each \$150.00 on their claims when they proved up, above all expenses and that he would furnish them the necessary money to make final proofs on their claims. I also told my brother Edgar J. Taylor of Mr. O'Keefe's proposition. O'Keefe told me to speak to my brother about it and I did so. It was only a few days before we left to inspect the timber that I spoke to my brother and Dammarell and Prentice about taking a claim. They

all agreed to the terms and conditions and understood Mr. O'Keefe's offer. It was my understanding when I filed on my claim that when I proved up it was to go to Mr. Kester. Kettenbach's name was not mentioned to me by O'Keefe. I heard O'Keefe say that he intended to give Prentice credit for the [3445—75] \$150.00 that he was to receive for his claim on what he, Prentice, owed the Cloverland Irrigation Co. It was my understanding that each of these parties, Edgar J. Taylor, Edgar H. Dammorell and Joseph H. Prentice filed on their claims on the same conditions that I did and that they each took the timber for O'Keefe. When I paid Mr. William Dwyer in Mr. Smith's office on the day I made final proof, Mr. O'Keefe handed me a new \$100.00 bill and told me to give that to Dwyer for locating me. No one else was present when I paid him so far as I remember. I did not think at the time that the payment was made to Dwyer in good faith. I turned over the Receiver's Final Receipt to Mr. O'Keefe in a day or two after I received it at the Land Office or when I made the deed to my claim. Mr. O'Keefe handed it back to me a few days after I learned that Special Agent Goodwin and Inspector O'Fallon were in Asotin. I think it was about the first of June, 1905. It was my understanding from Mr. O'Keefe stated to me if anyone asked about my claim that I would have the receiver's receipt to show so that I could claim I still owned the land—Mr. O'Keefe told me when I executed the deed for my claim that he would not put it on record. Mr. O'Keefe stated when I made the deed that if anyone asked me about the claim that I was to state that I

still owned it and the deed was not to be placed on record until I should receive my patent for the land.

CHARLES W. TAYLOR.

Attest: F. M. GOODWIN.

Sworn to and subscribed before me this 13th day of July, 1905.

S. F. O'FALLON,
Special Inspector." [3446—76]

Plaintiff's Exhibits Nos. 26 and 26-a to 26-l, Inclusive, Relate to the Application and Entry of Edgar J. Taylor.

Plaintiff's Exhibit No. 26: Edgar J. Taylor: Occupation, laborer.

Sworn statement dated and filed April 25, 1904, for the entry of Lots 3 and 4 and the East half of the Southwest quarter of Section 18, Tp. 38, North of Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 26-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 26-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 26-c: Testimony of Edgar J. Taylor given at final proof, July 11, 1904.

Answer to question No. 5 thereof: October 13, 1903.

With Mr. O'Keefe and Dwyer, walked over the land.

Answer to question No. 13 thereof: No. No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 26-d: Testimony of witness William Dwyer given at final proof, July 11, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 26-e: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 5 thereof: For myself and the State of Idaho.

Plaintiff's Exhibit No. 26-f: Cross-examination of Edgar J. Taylor at final proof.

Answer to question 6 thereof: Through Mr. J. O'Keefe.

Answer to question No. 7 thereof: No. Paid locator, Mr. Dwyer \$100.00.

Answer to question No. 8 thereof: Yes. On October 13, 1903 [3447—77] with William Dwyer on foot.

Answer to question No. 10 thereof: One million feet, \$1,000.00 or \$1,200.00, value.

Answer to question No. 12 thereof: Expect to hold it for awhile and use it for my own benefit.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, I believe.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: Part I had laid away and part I borrowed.

Answer to question No. 8 thereof: No.

Plaintiff's Exhibit No. 26-g: Cross-examination of Jackson O'Keefe at final proof.

Answer to question No. 3 thereof: Went with Mr. Dwyer and Taylor on foot to see the land.

Answer to question No. 8 thereof: Yes.

Plaintiff's Exhibit No. 26-h: Testimony of witness

Jackson O'Keefe given at final proof.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 26-i: Notice for publication and proof of publication.

Plaintiff's Exhibit No. 26-j: Receiver's receipt No. 4765 dated July 11, 1904.

Plaintiff's Exhibit No. 26-k: Final certificate No. 4765 dated July 11, 1904.

Plaintiff's Exhibit No. 26-l: Certified copy of patent dated December 31, 1904, granting to Edgar J. Taylor the land described in Plaintiff's Exhibit No. 26. [3448—78]

Plaintiff's Exhibits Nos. 27 and 27-a to 27-m, Inclusive, Relate to the Application and Entry of David S. Bingham.

Plaintiff's Exhibit No. 27: David S. Bingham. Occupation, laborer.

Sworn statement dated and filed April 25, 1904, for the entry of the Southeast quarter of Section 17 in Tp. 39, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 27-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 27-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 27-c: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 5 thereof: Myself and State of Idaho.

Plaintiff's Exhibit No. 27-d: Cross-examination of witness Edwin Bliss.

Answer to question No. 5 thereof: William Dwyer

and the State of Idaho.

Plaintiff's Exhibit No. 27-e: Cross-examination of David S. Bingham at final proof.

Answer to question No. 5 thereof: Foreman for the Cloverland Irrigation Company at Cloverland, Washington. \$75.00 per month.

Answer to question No. 6 thereof: Have known this tract many years.

Answer to question No. 7 thereof: No.

Answer to question No. 8 thereof: Yes. October, 1903, last time.

Answer to question No. 10 thereof: 3,000,000 feet.

Answer to question No. 11 thereof: Yes. Made my own estimate.

Answer to question No. 12 thereof: I expect to sell it. [3449—79]

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: From my earnings. 2 years.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 27-f: Testimony of David S. Bingham given at final proof, July 15, 1904.

Answer to question No. 12 thereof: \$3,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 27-g: Testimony of witness William Dwyer at final proof, July 15, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 27-h: Testimony of witness Edwin Bliss given at final proof.

Plaintiff's Exhibit No. 27-i: Proof of publication.

Plaintiff's Exhibit No. 27-j: Notice for publication. Persons named as witnesses therein, April 25, 1904, William Dwyer, Jackson O'Keefe, Guy L. Wilson, Edwin Bliss.

Plaintiff's Exhibit No. 27-k: Receiver's receipt No. 4781, dated July 15, 1904.

Plaintiff's Exhibit No. 27-l: Final certificate No. 4781, dated July 15, 1904.

Plaintiff's Exhibit No. 27-m: Certified copy of patent dated December 31, 1904, granting to David S. Bingham the land described in Plaintiff's Exhibit No. 27. [3450—80]

Plaintiff's Exhibits Nos. 28 and 28-a to 28-p, Inclusive, Relate to the Entry and Application of Edgar H. Dammarell.

Plaintiff's Exhibit No. 28: Edgar H. Dammarell. Occupation, rancher.

Sworn statement dated and filed April 25, 1904, for the entry of the Northeast quarter of Section 19, Tp. 38, North of Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 38-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 28-b: Affidavit of Edgar H. Dammarell to the effect that he is the same person referred to in the citizenship papers as Edgar H. S. Dammarell.

Plaintiff's Exhibit No. 28-c: Proof of publication.

Plaintiff's Exhibit No. 28-d: Missing.

Plaintiff's Exhibit No. 28-e: Notice for publication.

Plaintiff's Exhibit No. 28-f: Non-mineral affidavit.

Plaintiff's Exhibit No. 28-g: Testimony of Edgar H. Dammarell, at final proof, July 12, 1904.

Answer to question No. 5 thereof: October 14, '03, and July 1, '04, went over the land on foot.

Answer to question No. 12 thereof: At least \$2,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 28-h: Cross-examination of Edgar H. Dammarell at final proof.

Answer to question No. 6 thereof: Through Jackson O'Keefe and William Dwyer.

Answer to question No. 7 thereof: Yes. William Dwyer, \$100.00.

Answer to question No. 8 thereof: Yes, July 1, '04, went for the purpose of going over the land with Mr. Bliss. [3451—81]

Answer to question No. 10 thereof: One million and a half feet. About \$2,000.00.

Answer to question No. 11 thereof: No. Through Mr. Dwyer and Mr. Bliss.

Answer to question No. 12 thereof: Hold it for my own use.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I borrowed it.

Had it for 15 days. Got it on my note.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 28-i: Testimony of witness Jackson O'Keefe given at final proof, July 12, 1904.

Plaintiff's Exhibit No. 28-j: Cross-examination of witness Jackson O'Keefe at final proof.

Answer to question No. 7 thereof: Good.

Answer to question No. 8 thereof: Yes.

Plaintiff's Exhibit No. 28-k: Testimony of witness William Dwyer at final proof.

Plaintiff's Exhibit No. 28-l: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 5 thereof: Myself and State of Idaho.

Plaintiff's Exhibit No. 28-m: Naturalization papers of Edgar H. S. Dammarell.

Plaintiff's Exhibit No. 28-n: Receiver's receipt No. 4799, dated July 25, 1904.

Plaintiff's Exhibit No. 28-o: Final receipt No. 4799, dated July 25, 1904.

Plaintiff's Exhibit No. 28-p: Certified copy of patent dated December 31, 1904, granting to Edgar H. Dammarell the land described in Plaintiff's Exhibit No. 28. [3452—82]

Plaintiff's Exhibits Nos. 29 and 29-a to 29-n, Inclusive, Relate to the Application and Entry of Joseph H. Prentice.

Plaintiff's Exhibit No. 29: Joseph H. Prentice: Occupation, fruit-raiser and farmer.

Sworn statement dated and filed April 25, 1904, for the entry of Lots 1 and 2 and the East half of

the Northwest quarter of Section 18, Tp. 38, North of Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 29-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 29-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 29-c: Certificate of citizenship of Joseph H. Prentice.

Plaintiff's Exhibit No. 29-d: Testimony of Joseph H. Prentice given at final proof, July 11, 1904.

Answer to question No. 5 thereof: October 13th to 14th, 1903. Went over the land on foot.

Answer to question No. 13 thereof: No. No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 29-e: Cross-examination of Joseph H. Prentice at final proof.

Answer to question No. 6 thereof: By talking with Jackson O'Keefe and William Dwyer.

Answer to question No. 7 thereof: Yes. William Dwyer. \$100.00.

Answer to question No. 8 thereof: Yes. October 13th and 14th '03, went to see the land with Dwyer and Mr. O'Keefe.

Answer to question No. 10 thereof: 2 million feet. \$1,200.00 to \$1,500.00.

Answer to question No. 12 thereof: I expect to sell it when it becomes marketable. For my own benefit. [3453—83]

Answer to question No. 13 thereof: I do not.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I borrowed part of the money. I got it this morning and had the balance myself.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 29-f: Cross-examination of witness William Dwyer at final proof.

Plaintiff's Exhibit No. 29-g: Cross-examination of witness Edgar J. Taylor at final proof.

Answer to question 7 thereof: Don't know.

Answer to question 8 thereof: No.

Plaintiff's Exhibit No. 29-h: Testimony of witness William Dwyer given at final proof, July 11, 1904.

Plaintiff's Exhibit No. 29-i: Testimony of witness Edgar J. Taylor at final proof, July 11, 1904.

Answer to question 10 thereof: I do not.

Answer to question 11 thereof: No.

Plaintiff's Exhibit No. 29-j: Notice for publication.

Plaintiff's Exhibit No. 29-k: Proof of publication.

Plaintiff's Exhibit No. 29-l: Final certificate No. 4766, dated July 11, 1904.

Plaintiff's Exhibit No. 29-m: Receiver's receipt No. 4766, dated July 11, 1904.

Plaintiff's Exhibit No. 29-n: Certified copy of patent dated December 31, 1904, granting to Joseph H. Prentice the land described in Plaintiff's Exhibit No. 29.

Plaintiff's Exhibits Nos. 31 and 31-a to 31-o, Inclusive, Relate to the Application and Entry of John H. Long.

Plaintiff's Exhibit No. 30: Promissory note, which is copied in full at page 784 of transcript of the testimony. [3454—84]

Plaintiff's Exhibit No. 30-a: An escrow agreement and is copied in full at page 786 of the transcript of the testimony.

Plaintiff's Exhibit No. 30-b: John H. Long: Occupation, employment in sawmill.

Sworn statement dated and filed March 26, 1903, for the entry of Lot 2 and the Southwest quarter of the Northeast quarter and the South half of the Northwest quarter of Section 24 in Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 30-c: Duplicate of sworn statement.

Plaintiff's Exhibit No. 30-d: Non-mineral affidavit.

Plaintiff's Exhibit No. 30-e: Notice for publication.

Plaintiff's Exhibit No. 30-f: Proof of publication.

Plaintiff's Exhibit No. 30-g: Testimony of witness Francis M. Long given at final proof, June 18, 1903. Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 30-h: Cross-examination of Francis M. Long at final proof.

Answer to question No. 5 thereof: Small and Emery.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 30-i: Affidavit of Francis M. Long that his name is spelled Francis and not Frances, as appears in the proof of publication.

Plaintiff's Exhibit No. 30-j: Testimony of witness Benjamin F. Long given at final proof.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 30-k: Cross-examination of Benjamin F. Long at final proof.

Answer to question No. 5 thereof: Small and Emery.
[3455—85]

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 30-l: Testimony of John H. Long given at final proof, June 18, 1903.

Answer to question No. 12 thereof: \$1,500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Answer to question No. 5 thereof: March 24, 1903.

By walking over the land.

Plaintiff's Exhibit No. 30-m: Cross-examination of John H. Long at final proof.

Answer to question No. 5 thereof: Laborer. Small and Emery. \$2.50 per day.

Answer to question No. 6 thereof: W. B. Benton located me on this land.

Answer to question No. 7 thereof: Yes. W. B. Benton. \$125.00.

Answer to question No. 8 thereof: Yes. March 24, 1903, with W. B. Benton.

Answer to question No. 10 thereof: 1,600,000 feet.
\$1,500.00.

Answer to question No. 11 thereof: No, I had it estimated.

Answer to question No. 12 thereof: Use the timber.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 17 thereof: I earned it working in sawmill and other places.

Answer to question No. 16. Yes, yes.

Answer to question No. 18 thereof: Yes. Idaho National Bank.

Plaintiff's Exhibit No. 30-n; Receiver's receipt No. 4396, dated June 18, 1903.

Plaintiff's Exhibit No. 30-o: Final Certificate No. 4396, dated June 18, 1903.

Plaintiff's Exhibit No. 30-p: Certified copy of patent dated August 3, 1904, granting to John H. Long the land described in Plaintiff's Exhibit No. 30-b.

Plaintiff's Exhibit No. 30-q: Certified copy of [3456—86] Receiver's receipt dated Lewiston, Idaho, June 18, 1903, and numbered 4396, for \$375.35, being in full for Lot 2 of the Southwest quarter of the Northeast quarter and the South half of the Northwest quarter Section 24, Tp. 39, North of Range 3 East, Boise Meridian, containing 150.14 acres at \$2.50 per acre. Signed, Charles H. Garby, Receiver. Recorded at the request of William F. Kettenbach, June 22, 1903.

Plaintiff's Exhibit No. 30-r: Certified copy of mortgage made and executed by John H. Long, June 18, 1903, granting to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 30-b, to secure a

promissory note made by John H. Long, dated June 18, 1903, in the sum of \$710.00, payable to the order of Clarence W. Robnett one year after date without grace, with interest after date at 1% per month until paid. The said note also promises to pay the additional sum of \$70.00 as attorney's fees if suit is instituted to collect the same. Said mortgage was recorded at the request of W. F. Kettenbach, June 22, 1903.

Plaintiff's Exhibits Nos. 31 and 31-a to 31-o, Inclusive, Relate to the Application and Entry of Francis M. Long.

Plaintiff's Exhibit No. 31: Francis M. Long: Occupation, worker in sawmill.

Sworn statement dated and filed March 26, 1903, for the entry of the North half of the Southwest quarter and the North half of the Southeast quarter of Section 13 in Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 31-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 31-b: Non-mineral affidavit. [3457—87]

Plaintiff's Exhibit No. 31-c: Proof of publication.

Plaintiff's Exhibit No. 31-d: Testimony of Francis M. Long given at final proof, June 18, 1903.

Answer to question No. 4 thereof: Yes.

Answer to question No. 5 thereof: About March 24, 1903, and June 10 or 11, 1903, I walked over it.

Answer to question No. 12 thereof: \$1500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 31-e: Cross-examination of Francis M. Long at final proof.

Answer to question No. 5 thereof: Working in saw-mill and other labor. Small and Emery Mill Company et al., \$2.50 per day from Small and Emery.

Answer to question No. 6 thereof: William B. Benton and Edward L. Knight.

Answer to question No. 7 thereof: Yes. Benton and Knight. \$125.00

Answer to question No. 8 thereof: Yes. About March 24 and June 10, 1903, went over it with my two sons.

Answer to question No. 10 thereof: 1,700,000. \$1,-500.00.

Answer to question No. 11 thereof: No. Made a guess at it.

Answer to question No. 12 thereof: I expect to cut it off and make my living from it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: I suppose at Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I sold stock. 7 or 8 years.

Answer to question No. 18 thereof: Yes. Lewiston National Bank and Idaho National Bank, Lewiston, Idaho. [3458—88]

Plaintiff's Exhibit No. 31-f: Testimony of witness John H. Long at final proof, June 18, 1903.

Plaintiff's Exhibit No. 31-g: Cross-examination of witness John H. Long given at final proof, June 18, 1903.

Answer to question No. 4 thereof: Laborer.

Answer to question No. 5 thereof: Small and Emery Mill Company, principally.

Answer to question No. 8 thereof: Yes.

Plaintiff's Exhibit No. 31-h: Testimony of witness Benjamin F. Long given at final proof, June 18, 1903.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 31-i: Cross-examination of witness Benjamin F. Long at final proof, June 18, 1903.

Answer to question No. 4 thereof: Laborer in sawmill part of the time.

Answer to question No. 5 thereof: Small and Emery Mill Company, Lewiston, Idaho.

Answer to question No. 8 thereof: Yes.

Plaintiff's Exhibit No. 31-j: Notice for publication.

Plaintiff's Exhibit No. 31-k: Receiver's receipt No. 4395, dated June 18, 1903.

Plaintiff's Exhibit No. 31-l: Final certificate No. 4395, dated June 18, 1903.

Plaintiff's Exhibit No. 31-m: Certified copy of patent dated August 3, 1904, granting to Francis M. Long the land described in Plaintiff's Exhibit No. 31.

Plaintiff's Exhibit No. 31-m: Certified copy of Receiver's receipt No. 4395, dated June 18, 1903, the original of which is Plaintiff's Exhibit No. 31-h, recorded at the request of W. F. Kettenbach, June 22, 1903.

Plaintiff's Exhibit No. 31-o: Certified copy of mortgage made and executed by Francis M. Long and wife, June 18, 1903, granting to Clarence W. Robnett the land [3459—89] described in Plaintiff's Exhibit No. 31 to secure the promissory note signed by Francis M. Long and Anna E. Long, dated June 18, 1903, in the sum of \$728.75, payable one year after date without grace to the order of Clarence W. Robnett with interest after date at the rate of 1% per month until paid. Said note further provides for the payment of an additional sum of \$70.00 as attorney's fees if suit be instituted to collect said note. Said mortgage was recorded at the request of W. F. Kettenbach the 22d day of June, 1903.

Plaintiff's Exhibits Nos. 32 and 32-a to 32-o, Inclusive, Relate to the Application and Entry of Benjamin F. Long.

Plaintiff's Exhibit No. 32: Benjamin F. Long. Occupation, worker in sawmill.

Sworn statement dated and filed March 26, 1903, for the entry of the South half of the Northwest quarter and the South half of the Northeast quarter of Section 13, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 32-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 32-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 32-c: Proof of publication.

Plaintiff's Exhibit No. 32-d: Notice of publication.

Plaintiff's Exhibit No. 32-e: Testimony of witness Francis M. Long, given at final proof, June 18, 1903.

Answer to question No. 3 thereof: June 11, 1903, by walking over it.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 32-f: Cross-examination of witness Francis M. Long at final proof. [3460—90]

Answer to question No. 5 thereof: Small and Emery Mill Company, Lewiston, Idaho.

Answer to question No. 8 thereof: Yes.

Plaintiff's Exhibit No. 32-g: Testimony of witness John H. Long given at final proof, June 18, 1903.

Answer to question No. 3 thereof: June 11, 1903, last time—by walking over it.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 32-h: Cross-examination of witness John H. Long at final proof.

Answer to question No. 5 thereof: Most of the time in Small and Emery's sawmill.

Answer to question No. 8 thereof: Yes.

Plaintiff's Exhibit No. 32-i: Testimony of Benjamin F. Long given at final proof, June 18, 1903.

Answer to question No. 5 thereof: March 24, 1903, and June 11 or 12, 1903, I walked over this land.

Answer to question No. 12 thereof: \$1,500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 32-j: Cross-examination of Benjamin F. Long at final proof.

Answer to question No. 5 thereof: Laborer. Different parties. Made from \$2.00 to \$2.50 per day.

Answer to question No. 6 thereof: William B. Benton.

Answer to question No. 7 thereof: Yes. William B. Benton, \$125.00.

Answer to question No. 8 thereof: Yes, March 24 and June 11, 1903, walked over it.

Answer to question No. 10 thereof: 1,700,000 feet. \$1500.00.

Answer to question No. 11 thereof: Yes.

Answer to question No. 12 thereof: I expect to cut it off. [3461—91]

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof; Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I worked for it. 2 years.

Answer to question No. 18 thereof: Yes. Lewiston National Bank and Idaho National Bank, Lewiston, Idaho.

Plaintiff's Exhibit No. 32-k: Receiver's receipt No. 4397, dated June 18, 1903.

Plaintiff's Exhibit No. 32-l: Final Certificate No. 4397, dated June 18, 1903.

Plaintiff's Exhibit No. 32-m: Certified copy of patent dated August 3, 1904, granting to Benjamin F. Long, the land described in Plaintiff's Exhibit No. 32.

Plaintiff's Exhibit No. 32-n: Certified copy of receiver's receipt No. 4397 issued to Benjamin F. Long, dated June 18, 1903, in payment of the land described in Plaintiff's Exhibit No. 32. Recorded at the re-

quest of W. F. Kettenbach, June 22, 1903.

Plaintiff's Exhibit No. 32-o: Certified copy of mortgage made and executed by Benjamin F. Long, June 18, 1903, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 32, to secure promissory note signed by Benjamin F. Long, dated June 18, 1903, in the sum of \$728.75, payable to the order of Clarence W. Robnett in one year with interest at the rate of 1% per month. An additional promise is made in said note to pay the sum of \$70.00 as attorney's fees in the event of a suit being brought to collect it. Said mortgage was recorded at the request of William F. Kettenbach, June 22, 1903. [3462—92]

Plaintiff's Exhibits Nos. 33 and 33-a to 33-h, Inclusive, Relate to the Application and Entry of George Ray Robison.

Plaintiff's Exhibit No. 33: George Ray Robison. Occupation, electrician.

Sworn statement dated and filed March 31, 1903, for the entry of the North half of the Northwest quarter and the North half of the Northeast quarter of Section 26, Tp. 39, North of Range 3, East, Boise Meridian.

Plaintiff's Exhibit No. 33-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 33-b: Testimony of George Ray Robison given at final proof, June 26, 1903.

Answer to question No. 5 thereof: About one year ago and May 9, 1903, I walked over it.

Answer to question No. 12 thereof: \$1,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 33-c: Cross-examination of George Ray Robison at final proof.

Answer to question No. 5 thereof: Lineman. Lewiston, Idaho. Lewiston Water & Power Company. \$2.50 per day.

Answer to question No. 6 thereof: Through a locator.

Answer to question No. 7 thereof: Yes. William B. Benton. \$125.00.

Answer to question No. 8 thereof: Yes. About one year ago and May 9, 1903, walked over it.

Answer to question No. 10 thereof: 1,500,000 feet. \$1,000.00.

Answer to question No. 12 thereof: I expect to hold it for the future.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho, I think. [3463—93]

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I had some of it and I borrowed \$400.00 on my personal note.

Answer to question No. 18 thereof: No.

Plaintiff Exhibit No. 32-d: Receiver's receipt No. 4415, dated June 26, 1903.

Plaintiff's Exhibit No. 32-e: Final certificate No. 4415, dated June 26, 1903.

Plaintiff's Exhibit No. 33-f: Certified copy of patent dated August 3, 1904, granting to George Ray Robison the land described in Plaintiff's Exhibit No. 33.

Plaintiff's Exhibit No. 33-g: Certified copy of Receiver's receipt No. 4415, dated June 26, 1903, issued to George Ray Robison for money received in payment of land described in Plaintiff's Exhibit No. 33. Recorded at the request of W. F. Kettenbach July 1, 1903, in the office of the recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 33-h: Certified copy of mortgage made and executed by George Ray Robinson, June 26, 1903, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 33, to secure a note signed by George Ray Robinson, dated June 26, 1903, in the sum of \$728.75, payable in one year after date to the order of Clarence W. Robnett, with interest at the rate of one per cent per month until paid. Said note also promises to pay the additional sum of \$75.00 attorney's fees in the event suit is brought to collect the same. Said mortgage was recorded at the request of W. F. Kettenbach, July 1, 1903, in the office of the Recorder of Shoshone County, Idaho. [3464—94]

Plaintiff's Exhibits Nos. 34 and 34-a to 34-o, Inclusive, Relate to the Application and Entry of Elsworth M. Harrington.

Plaintiff's Exhibit No. 34: Elsworth M. Harrington: Occupation, engineer.

Sworn statement dated and filed March 20, 1903, for the entry of Lot 1 and the Northwest quarter of the Northeast quarter and the North half of the Northwest quarter of Section 24 in Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 34-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 34-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 34-c: Notice for publication, dated March 20, 1903. The persons named therein as witnesses are: Edward L. Knight, William B. Benton, Benjamin F. Bashor and John H. Little.

Plaintiff's Exhibit No. 34-d: Proof of publication.

Plaintiff's Exhibit No. 34-e: Testimony of witness William B. Benton given at final proof, June 15, 1903.

Answer to question No. 3 thereof: Last time, May 9, 1903, walked over it.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No.

Plaintiff's Exhibit No. 34-f: Cross-examination of witness William B. Benton at final proof.

Plaintiff's Exhibit No. 34-g: Testimony of witness Edward L. Knight at final proof, June 15, 1903.

Answer to question No. 3 thereof: May 9, 1903. Last time by walking over it.

Plaintiff's Exhibit No. 34-h: Cross-examination of witness Edward L. Knight at final proof.

Plaintiff's Exhibit No. 34-i: Testimony of Elsworth [3465—95] M. Harrington given at final proof, June 15, 1903.

Answer to question No. 5 thereof: September, 1900 and June 8, 1903, I went over the land.

Answer to question No. 12 thereof: \$1200.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 34-j: Cross-examination of Elsworth M. Harrington at final proof.

Answer to question No. 7 thereof: Yes. William B. Benton. \$100.00.

Answer to question No. 8 thereof: Yes. September, 1900, and June 8, 1900, walked over it.

Answer to question No. 6 thereof: Through Wm. B. Benton.

Answer to question No. 10 thereof: 1,000,000 ft. \$1200.00.

Answer to question No. 11 thereof: Yes.

Answer to question No. 12 thereof: I expect to keep the land and take the timber off.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: Worked for it, 3 or 4 months.

Answer to question No. 18 thereof: Yes. Lewiston National Bank, Lewiston, Idaho.

Plaintiff's Exhibit No. 34-k: Receiver's receipt No. 4384, dated June 15, 1903.

Plaintiff's Exhibit No. 34-l: Final Certificate No. 4384, dated June 15, 1903.

Plaintiff's Exhibit No. 34-m: Certified copy of patent dated August 3, 1904, granting to Elsworth M. Harrington the land described in Plaintiff's Exhibit No. 34.

Plaintiff's Exhibit No. 34-n: Certified copy [3466—96] of receiver's receipt No. 4384 and is-

sued to Elsworth M. Harrington, June 15, 1903, for the amount given in payment for the land described in Plaintiff's Exhibit No. 34. Recorded at the request of W. F. Kettenbach at the office of the Recorder of Shoshone County, Idaho, June 20, 1903.

Plaintiff's Exhibit No. 34-o: Certified copy of mortgage made and executed by Elsworth M. Harrington and wife, June 16, 1903, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 34, to secure promissory note signed by Elsworth M. Harrington and Anna E. Harrington, June 16, 1903, in the sum of \$729.75, payable to the order of Clarence W. Robnett in one year after date with interest at the rate of 1% per month. Said note also provides for the payment of the additional sum of \$70.00 in the event suit is brought to collect the same. The mortgage was filed for record at the office of the recorder of Shoshone County, at the request of W. F. Kettenbach, June 20, 1903.

Plaintiff's Exhibit No. 35.

Affidavit of Francis A. Justice. Is copied in full on pages 907, 908 and 909 of the transcript of the testimony.

Plaintiff's Exhibits Nos. 36 and 36-a to 36-m, Inclusive, Relate to the Application and Entry of Fred E. Justice.

Plaintiff's Exhibit No. 36: Fred E. Justice. Occupation, farmer.

Sworn statement dated and filed April 25, 1904, for the entry of the East half of the East half of Section 20, Tp. 38, North of Range 6 East, Boise Meridian. [3467—97]

Plaintiff's Exhibit No. 36-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 36-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 36-c: Cross-examination of Fred E. Justice at final proof.

Answer to question No. 7 thereof: I paid the locator, William Dwyer, \$100.00.

Answer to question No. 8 thereof: Yes. October 9, 1903, went with Mr. Dwyer to locate the land.

Answer to question No. 10 thereof: One and three-quarters million feet. About \$1800.00 or \$2,000.00.

Answer to question No. 11 thereof: Yes, by going over the land and sizing up the timber.

Answer to question No. 12 thereof: I am going to keep it for future use, expect some day to sell it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: Raising fruit.

Have been accumulating it for 4 years.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 36-d: Proof of publication.

Plaintiff's Exhibit No. 36-e: Notice of publication.

Plaintiff's Exhibit No. 36-f: Testimony of witness Edwin Bliss given at final proof, July 13, 1904.

Plaintiff's Exhibit No. 36-g: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 36-h: Testimony of witness Wm. Dwyer given at final proof, July 13, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No. No.

Plaintiff's Exhibit No. 36-i: Cross-examination of witness William Dwyer at final proof. [3468—98]

Answer to question No. 5 thereof: Myself and State of Idaho.

Answer to question No. 7 thereof: Good.

Answer to question No. 8 thereof: I do not, but think so.

Plaintiff's Exhibit No. 36-j: Testimony of Fred E. Justice given at final proof, July 13, 1904.

Answer to question No. 5 thereof: October 9, 1903, I went over the land on foot in company with Mr. Dwyer and Mr. Bliss.

Answer to question No. 12 thereof: It ought to be worth \$1800.00 or \$2,000.00.

Plaintiff's Exhibit No. 36-k: Final certificate No. 4772, dated July 13, 1904.

Plaintiff's Exhibit No. 36-l: Receiver's receipt No. 4772, dated July 13, 1904.

Plaintiff's Exhibit No. 36-m: Certified copy of patent dated December 31, 1904, granting to Fred E. Justice the land described in Plaintiff's Exhibit No. 36.

Plaintiff's Exhibits Nos. 37 and 37-a to 37-m, Inclusive, Relate to the Application and Entry of Jackson O'Keefe.

Plaintiff's Exhibit No. 37: Jackson O'Keefe. Occupation, laborer.

Sworn statement dated and filed April 25, 1904, for the entry of the West half of the Southeast quarter and the East half of the Southwest quarter of Sec-

tion 23, Tp. 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 37-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 37-b: Non-mineral affidavit.
[3469—99]

Plaintiff's Exhibit No. 37-c: Testimony of Jackson O'Keefe given at final proof, July 11, 1904.

Answer to question No. 12 thereof: I do not know.

Say \$1200.00 or \$1500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 37-d: Cross-examination of Jackson O'Keefe at final proof.

Answer to question No. 6 thereof: Through Mr. Dwyer.

Answer to question No. 7 thereof: Yes, to William Dwyer, \$100.00.

Answer to question No. 8 thereof: Yes, July 1, went to look over the land again—Mr. Edwin Bliss went with me.

Answer to question No. 10 thereof: Between one million and a million and a half, valued at \$1200.00 or \$1500.00.

Answer to question No. 12 thereof: To hold it until I can sell it to good advantage.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned it in my

business. I drew on the bank for it to-day.

Answer to question No. 18 thereof: Yes. Lewiston National Bank and Bank of Asotin.

Plaintiff's Exhibit No. 37-e: Cross-examination of witness William Dwyer given at final proof.

Answer to question No. 3 thereof: Went over the land in company with Mr. O'Keefe. Mountainous, rough and rocky. Covered with timber.

Answer to question No. 5 thereof: By myself and 20 days for State of Idaho.

Plaintiff's Exhibit No. 37-f: Testimony of witness [3470—100] Edwin Bliss given at final proof, July 11, 1904.

Plaintiff's Exhibit No. 37-g: Testimony of witness William Dwyer given at final proof, July 11, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No. No.

Plaintiff's Exhibit No. 37-h: Cross-examination of Edwin Bliss at final proof.

Plaintiff's Exhibit No. 37-i: Proof of publication.

Plaintiff's Exhibit No. 37-j: Notice for publication.

Plaintiff's Exhibit No. 37-k: Receiver's receipt No. 4764, dated July 11, 1904.

Plaintiff's Exhibit No. 37-l: Final certificate No. 4764, dated July 11, 1904.

Plaintiff's Exhibit No. 37-m: Certified copy of patent dated December 31, 1904, granting to Jackson O'Keefe the land described in Plaintiff's Exhibit No. 37.

Plaintiff's Exhibits Nos. 38 and 38-a to 38-p, Inclusive, Relate to the Application and Entry of Joseph B. Clute.

Plaintiff's Exhibit No. 38: Joseph B. Clute: Occupation, lumberman.

Sworn statement dated and filed March 24, 1903, for the entry of the South half of the Northeast quarter and the East half of the Southeast quarter of Section 26, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 38-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 38-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 38-c: Notice for publication [3471—101] dated March 24, 1903. Persons named therein as witnesses: Charles Smith, James C. Evans, Lon E. Bishop and Fred Emery.

Plaintiff's Exhibit No. 38-d: Proof of publication.

Plaintiff's Exhibit No. 38-e: Cross-examination of witness Lon E. Bishop.

Answer to question 5 thereof: Small & Emery.

Plaintiff's Exhibit No. 38-f: Testimony of Joseph B. Clute given at final proof, June 17, 1903.

Answer to question No. 5 thereof: March 18, 1903, by walking over the land.

Answer to question No. 12 thereof: \$1500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 38-g: Affidavit of Joseph

B. Clute, to the effect that he could not make proof on the day set for that purpose, as he could not get his witnesses.

Plaintiff's Exhibit No. 38-h: Testimony of witness James C. Evans given at final proof, June 17, 1903.

Plaintiff's Exhibit No. 38-i: Cross-examination of witness James C. Evans given at final proof.

Plaintiff's Exhibit No. 38-j: Testimony of witness Lon E. Bishop given at final proof.

Plaintiff's Exhibit No. 38-k: Cross-examination of Joseph B. Clute given at final proof.

Answer to question No. 5 thereof: Logging, Emery and Small, \$1.50 to \$3.00 per day.

Answer to question No. 6 thereof: I was looking for land and found this tract.

Answer to question No. 7 thereof: No.

Answer to question No. 8 thereof: Yes. March 18, 1903, with J. Evans and others. [3472—102]

Answer to question No. 10 thereof: 2,500,000 feet. \$1500.00.

Answer to question No. 11 thereof: Yes.

Answer to question No. 12 thereof: Log it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I worked for it with Small and Emery. 2 months.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 38-l: Receiver's receipt No. 4393, dated June 17, 1903.

Plaintiff's Exhibit No. 38-m: Final certificate No.

4393, dated June 17, 1903.

Plaintiff's Exhibit No. 38-n: Certified copy of patent dated August 3, 1904, granting to Joseph B. Clute the land described in Plaintiff's Exhibit No. 38.

Plaintiff's Exhibit No. 38-o: Certified copy of Receiver's receipt No. 4393, issued to Joseph B. Clute, June 17, 1903, for the amount received in payment for the land described in Plaintiff's Exhibit No. 38. Recorded at the request of George H. Kester, August 10, 1903, in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 38-p: Certified copy of warranty deed made and executed by Joseph B. Clute, June 17, 1903, conveying to William F. Kettenbach and George H. Kester in fee simple, the land described in Plaintiff's Exhibit No. 38. Consideration mentioned in deed \$1,000.00. Filed for record at the request of George H. Kester in the office of the Recorder of Shoshone County, August 10, 1903. [3473—103]

Plaintiff's Exhibits Nos. 39 and 39-a to 39-m, Inclusive, Relate to the Application and Entry of William E. Helkenberg.

Plaintiff's Exhibit No. 39: William E. Helkenberg. Occupation, farmer.

Sworn statement dated and filed October 26, 1904, for the entry of the Northwest quarter of the Southwest quarter of Section 28 and the Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section 29, Tp. 39, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 39-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 39-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 39-c: Testimony of witness Melvern C. Scott given at final proof, January 20, 1905.

Plaintiff's Exhibit No. 39-d: Cross-examination of witness Melvern C. Scott at final proof.

Plaintiff's Exhibit No. 39-e: Testimony of witness Edwin Bliss given at final proof, January 20, 1905.

Plaintiff's Exhibit No. 39-f: Cross-examination of witness Edwin Bliss at final proof.

Answer to question No. 5 thereof: State of Idaho.
William Dwyer.

Plaintiff's Exhibit No. 39-g: Testimony of William E. Helkenberg given at final proof, January 20, 1905.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 39-h: Cross-examination of William E. Helkenberg, given at final proof, January 20, 1905.

Answer to question No. 5 thereof: Ranching and freighting. [3474—104] William Dwyer. 3.00 and expenses per day.

Answer to question No. 6 thereof: William Dwyer.

Answer to question No. 7 thereof: Yes. William Dwyer. \$150.00.

Answer to question No. 8 thereof: Yes. January 17, 1905. Went to see the timber—Edward Lewis.

Answer to question No. 10 thereof: Nearly 3,000,000 feet. \$2,000.00.

Answer to question No. 12 thereof: Hold it for my own use.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Don't know.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I worked for it—and by the sale of property—part of it some time.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 39-i: Affidavit of publication.

Plaintiff's Exhibit No. 39-j: Notice for publication dated October 26, 1904. Persons named therein as witnesses: Melvern C. Scott, William White, Edwin Bliss and Thomas B. Reed.

Plaintiff's Exhibit No. 39-k: Receiver's receipt No. 5015, dated January 20, 1905.

Plaintiff's Exhibit No. 39-l: Final certificate No. 5015, dated January 20, 1905.

Plaintiff's Exhibit No. 39-m: Certified copy of patent issued to William E. Helkenberg, May 29, 1907 granting to William E. Helkenberg the property described in Plaintiff's Exhibit No. 39. [3475—105]

Plaintiff's Exhibits Nos. 40 and 40-a to 40-p, Inclusive, Relate to the Application and Entry of Wren Pierce.

Plaintiff's Exhibit No. 40: Wren Pierce. Occupation, painter.

Sworn statement dated and filed March 21, 1905,

for the entry of the Southeast quarter of Section 22, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 40-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 40-b: Notice for publication, dated March 21, 1903. Persons named as witnesses therein: Edward L. Knight, William B. Benton, Walter S. Heath and Benjamin F. Bashor.

Plaintiff's Exhibit No. 40-c: Non-mineral affidavit.

Plaintiff's Exhibit No. 40-d: Proof of publication.

Plaintiff's Exhibit No. 40-e: Testimony of witness Benjamin F. Bashor given at final proof, June 17, 1903.

Answer to question No. 3 thereof: March 6, 1903, walked across it.

Plaintiff's Exhibit No. 40-f: Cross-examination of witness Benjamin F. Bashor at final proof.

Plaintiff's Exhibit No. 40-g: Testimony of witness Walter S. Heath at final proof, June 17, 1903.

Answer to question No. 3 thereof: March 15, 1903, I went over this tract.

Plaintiff's Exhibit No. 40-h: Cross-examination of witness Walter S. Heath at final proof.

Plaintiff's Exhibit No. 40-i: Testimony of Wren Pierce given at final proof, June 17, 1903.

Answer to question No. 5 thereof: March 15 and May 29, 1903.

Answer to question No. 12 thereof: \$1800.00.

[3476—106]

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 40-j: Cross-examination of Wren Pierce at final proof, June 17, 1903.

Answer to question No. 7 thereof: Yes. William B. Benton, \$125.00.

Answer to question No. 8 thereof: Yes, March 15 and May 29, 1903, by walking over this land.

Answer to question No. 10 thereof: 1,800,000 cubic feet. \$1800.00.

Answer to question No. 11 thereof: No. That was my guess at it.

Answer to question No. 12 thereof: I do not know yet.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: I do not know of any market.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I worked for it. Two months.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 40-k: Receiver's receipt No. 4389, dated June 17, 1903.

Plaintiff's Exhibit No. 40-l: Final certificate No. 4389, dated June 17, 1903.

Plaintiff's Exhibit No. 40-m: Certified copy of patent dated August 3, 1904, granting to Wren Pierce the land described in Plaintiff's Exhibit No. 40.

Plaintiff's Exhibit No. 40-n: Certified copy of receiver's receipt No. 4389, dated June 17, 1903, issued to Wren Pierce for the sum paid for the land described in Plaintiff's Exhibit No. 40. Recorded at the request of W. F. Kettenbach, June 20, 1903, in the

office of the [3477—107] Recorder of Shoshone County.

Plaintiff's Exhibit No. 40-o: Certified copy of mortgage made and executed by Wren Pierce and wife, June 17, 1903, granting to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 40 to secure a promissory note signed by Wren Pierce and May Pierce, dated June 17, 1903, in the sum of \$728.75, payable to the order of Clarence W. Robnett one year after date, with interest at the rate of 1% per month. Said note also provided for the payment of an additional sum of \$75.00 as attorney's fees in the event a suit was brought to collect said note. Said mortgage was filed for record at the request of W. F. Kettenbach, June 20, 1903, in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 40-p: Certified copy of deed made and executed by Wren Pierce and wife, May 31, 1904, conveying to William F. Kettenbach in fee simple, the land described in Plaintiff's Exhibit No. 40. Consideration mentioned therein being \$1.00. Said deed was recorded at the request of William F. Kettenbach, June 3, 1904, in the office of the Recorder of Shoshone County.

Plaintiff's Exhibit No. 41.

“Lewiston, Idaho, November 12, 1904.

IDAHO TRUST COMPANY

Pay to the order of W. F. Kettenbach, \$519.25
Five Hundred and nineteen and 25/100 Dollars.

LIZZIE KETTENBACH.”

Stamped paid by Idaho Trust Company, Nov. 14,
1904.

Endorsed: W. F. Kettenbach. [3478—108]

Stamped paid by Lewiston National Bank, Nov. 14, 1904.

Plaintiff's Exhibit No. 42.

"LEWISTON NATIONAL BANK

Lewiston, Idaho, July 14, 1904.

Received from Lizzie Kettenbach, one hundred dollars for location fee, 160 @ T. & S. in Tp. 38-5 E., \$100.00.

WILLIAM DWYER."

Plaintiff's Exhibits Nos. 43 and 43-a to 43-m, Inclusive, Relate to the Application and Entry of Elizabeth Kettenbach.

Plaintiff's Exhibit No. 43: Elizabeth Kettenbach. Occupation, librarian.

Sworn statement dated and filed April 25, 1904, for the entry of the West half of the East half of Section 13, Township 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 43-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 43-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 43-c: Proof of publication.

Plaintiff's Exhibit No. 43-d: Notice for publication, dated April 25, 1904. Persons named as witnesses therein: William J. White, George H. Kester, William Dwyer and Edwin Bliss.

Plaintiff's Exhibit No. 43-e: Testimony of Elizabeth Kettenbach given at final proof, July 14, 1904.

Answer to question No. 12 thereof: \$1,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes,

Answer to question No. 15 thereof: No. [3479—109]

Plaintiff's Exhibit No. 43-f: Cross-examination of Elizabeth Kettenbach at final proof.

Answer to question No. 6 thereof: Through William Dwyer.

Answer to question No. 7 thereof: Yes. William Dwyer, \$100.00.

Answer to question No. 8 thereof: Yes. October, 1903, walked and rode over it with Mr. Dwyer, William J. White, George H. Kester, et al.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: From sale of real estate. Six months.

Answer to question No. 18 thereof: Yes, Idaho Trust Company, Lewiston, Idaho.

Plaintiff's Exhibit No. 43-g: Testimony of witness Edwin Bliss given at final proof.

Plaintiff's Exhibit No. 43-h: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 43-i: Testimony of witness William Dwyer given at final proof, July 14, 1904.

Plaintiff's Exhibit No. 43-j: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 5 thereof: Myself and State of Idaho.

Plaintiff's Exhibit No. 43-k: Receiver's receipt No. 4774, dated July 14, 1904.

Plaintiff's Exhibit No. 43-l: Final certificate No. 4774, dated July 14, 1904.

Plaintiff's Exhibit No. 43-m: Certified copy of patent dated December 31, 1904, granting to Elizabeth Kettenbach the land described in Plaintiff's Exhibit No. 43. [3480—110]

Plaintiff's Exhibits Nos. 44 and 44-a to 44-m, Inclusive, Relate to the Application and Entry of Martha E. Hallett.

Plaintiff's Exhibit No. 44: Martha E. Hallett. Occupation, housekeeper.

Sworn statement dated and filed Apr. 25, 1904, for the entry of Lots 1 and 2 and the East half of the Northwest quarter of Section 19, Township 38, North of Range 6 East, Boise Meridian.

Plaintiff's Exhibit No. 44-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 44-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 44-c: Proof of publication.

Plaintiff's Exhibit No. 44-d: Notice for publication dated April 25, 1904. Persons named therein as witnesses: George H. Kester, William J. White, William Dwyer, Edwin Bliss.

Plaintiff's Exhibit No. 44-e: Testimony of Martha E. Hallett given at final proof, July 15, 1904.

Answer to question No. 12 thereof: \$1,000.00 or \$1,200.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 44-f: Cross-examination of Martha E. Hallett at final proof.

Answer to question No. 6 thereof: Through William Dwyer.

Answer to question No. 7 thereof: Yes. William Dwyer. \$100.00.

Answer to question No. 8 thereof: Yes. October,

1903, walked over this land with William Dwyer.

Answer to question No. 12 thereof: Keep it for my future use.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No. [3481—
111]

Answer to question No. 16 thereof: Yes. .

Answer to question No. 17 thereof: From my husband's estate. One year.

Answer to question No. 18 thereof: Yes. Lewiston National Bank.

Plaintiff's Exhibit No. 44-g: Testimony of witness William Dwyer given at final proof, July 15, 1904.

Plaintiff's Exhibit No. 44-h: Cross-examination of witness William Dwyer at final proof.

Answer to question No. 5 thereof: Myself and State of Idaho.

Plaintiff's Exhibit No. 44-i: Testimony of witness Edwin Bliss given at final proof.

Plaintiff's Exhibit No. 44-j: Cross-examination of witness Edwin Bliss at final proof.

Plaintiff's Exhibit No. 44-k: Receiver's receipt No. 4779, dated July 15, 1904.

Plaintiff's Exhibit No. 44-l: Final certificate No. 4779, dated July 15, 1904.

Plaintiff's Exhibit No. 44-m: Certified copy of patent dated December 31, 1904, granting to Martha E. Hallett the land described in Plaintiff's Exhibit No. 44.

Plaintiff's Exhibits Nos. 45 and 45-a to 45-q, Inclusive, Relate to the Application and Entry of John H. Little.

Plaintiff's Exhibit No. 45: John H. Little. Occupation, clerk.

Sworn statement dated and filed March 20, 1903, for Lot 1 and the West half of the Northeast quarter and the Southeast quarter of the Northeast quarter of Section 25, Tp. 39, North of Range 3 East, Boise Meridian. [3482—112]

Plaintiff's Exhibit No. 45-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 45-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 45-c: Notice for publication, dated March 20, 1903. Persons named as witnesses therein: Edward L. Knight, William B. Benton, Benjamin F. Bashor and James A. Storer.

Plaintiff's Exhibit No. 45-d: Proof of publication.

Plaintiff's Exhibit No. 45-e: Missing.

Plaintiff's Exhibit No. 45-f: Testimony of John H. Little given at final proof, June 15, 1903.

Answer to question No. 4 thereof: Yes.

Answer to question No. 5 thereof: March 6, 1903, by walking over the land.

Answer to question No. 12 thereof: \$1,500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 45-g: Cross-examination of John H. Little at final proof.

Answer to question No. 6 thereof: W. B. Benton located me.

Answer to question No. 7 thereof: Yes. W. B. Benton, \$100.00.

Answer to question No. 8 thereof: Yes. March 6, 1903, with B. Bashor et al.

Answer to question No. 10 thereof: 1,500,000 feet. \$1,500.00.

Answer to question No. 11 thereof: No. Guessed at it.

Answer to question No. 12 thereof: Keep it until I find a good market for it. [3483—113]

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I made it by selling property. Two months.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 45-h: Testimony of witness Edward L. Knight given at final proof, June 15, 1903.

Plaintiff's Exhibit No. 45-i: Cross-examination of witness Edward L. Knight at final proof.

Answer to question No. 7 thereof: Good.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 45-j: Testimony of witness William B. Benton given at final proof, June 15, 1903.

Answer to question No. 3 thereof: May 9, 1903, by walking over the land.

Plaintiff's Exhibit No. 45-k: Cross-examination of witness William B. Benton at final proof.

Answer to question No. 3 thereof: Examined land May 9, 1903, by walking over it.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 45-l: Receiver's receipt No. 4383, dated June 15, 1903.

Plaintiff's Exhibit No. 45-m: Final certificate No. 4383, dated June 15, 1903.

Plaintiff's Exhibit No. 45-n: Certified copy of receiver's receipt No. 4383 issued to John H. Little, June 15, 1903, for the sum given in payment for the land described in Plaintiff's Exhibit No. 45. Recorded at the request of W. F. Kettenbach in the office of the [3484—114] Recorder of Shoshone County, Idaho, June 20, 1903.

Plaintiff's Exhibit No. 45-o: Certified copy of a mortgage executed by John H. Little and wife, June 15, 1903, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 45, to secure a promissory note made and signed by John H. Little June 15, 1903, in the sum of \$760.00, payable to the order of Clarence W. Robnett in one year after date, at the Lewiston National Bank with interest at the rate of 1% per month, and further, if suit be instituted to collect said note, an additional sum of \$75.00 is to be paid as attorney's fees. Said mortgage was recorded at the request of W. F. Kettenbach in the office of the Recorder of Shoshone County, June 20, 1903.

Plaintiff's Exhibit No. 45-p: Certified copy of warranty deed made and executed by John H. Little and wife, October 24, 1904, conveying to Wm. F. Kettenbach in fee simple, the land described in

Plaintiff's Exhibit No. 45. Consideration mentioned in the deed \$1.00. Recorded at the request of W. F. Kettenbach in the office of the Recorder of Shoshone County, Idaho, October 27, 1904.

Plaintiff's Exhibit No. 45-q: Certified copy of patent dated August 3, 1904, granting to John H. Little the land described in Plaintiff's Exhibit No. 45.

Plaintiff's Exhibit No. 46.

Certified copy of receiver's receipt No. 4414 issued to Bertsel H. Ferris, June 26, 1903, for the payment of the sum received in payment for Lot 3 and the Northwest quarter of the Southeast quarter and the North half of the Southwest quarter of Section 24, Township 39, North of Range 3 East, Boise Meridian. Recorded at the request of W. F. Kettenbach, July 1, 1903, [3485—115] in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibits Nos. 47 and 47-a to 47-o, Inclusive, Relate to the Application and Entry of Hattie Rowland.

Plaintiff's Exhibit No. 47: Hattie Rowland. Occupation, housewife.

Sworn statement dated and filed April 25, 1904, for the entry of the Southeast quarter of the Northwest quarter and the South half of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 15, Tp. 38, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 47-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 47-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 47-c: Notice for publication dated April 25, 1904. Persons named as witnesses therein: Lee B. Stansbury, Edwin Bliss, William Dwyer and William J. White.

Plaintiff's Exhibit No. 47-d: Proof of publication.

Plaintiff's Exhibit No. 47-e: Affidavit of Hattie Rowland dated April 25, 1905, in which she swears that she has submitted her filing for and purposes to purchase the land described in Plaintiff's Exhibit No. 47 with her separate money, in which her husband has no interest or claim; that said entry is made for her sole use and benefit; that she has made no contract whereby any interest whatsoever therein will inure to the benefit of her husband or any other person and that she has not made an entry under the timber and stone laws or derived or had any interest whatever, directly or indirectly, [3486—116] in or from a former entry made by any person or association of persons.

Plaintiff's Exhibit No. 47-f: Affidavit of Hattie Rowland, dated July 18, 1904, similar to Exhibit No. 47-e.

Plaintiff's Exhibit No. 47-g: Testimony of Hattie Rowland given at final proof, July 18, 1904.

Answer to question No. 5 thereof: In October, 1903, and July 8, 1904, I went over the land on foot with Mr. William Dwyer and Edwin Bliss.

Answer to question No. 12 thereof: \$1,000.00.

Answer to question No. 13 thereof: No. No.

Answer to question No. 14 thereof: I do.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 47-h: Missing.

Plaintiff's Exhibit No. 47-i: Testimony of witness William Dwyer given at final proof, July 18, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No. No.

Plaintiff's Exhibit No. 47-j: Cross-examination of witness William Dwyer at final proof, July 18, 1904.

Answer to question No. 5 thereof: Myself and State of Idaho.

Answer to question No. 7 thereof: Good.

Answer to question No. 8 thereof: I do not.

Plaintiff's Exhibit No. 47-k: Testimony of Edwin Bliss given at final proof, July 18, 1904.

Answer to question No. 10 thereof: No.

Answer to question No. 11 thereof: No. No.

Plaintiff's Exhibit No. 47-l: Cross-examination of Edwin Bliss given at final proof. [3487—117]

Answer to question No. 8 thereof: I think so.

Plaintiff's Exhibit No. 47-m: Receiver's receipt No. 4785, dated July 18, 1904.

Plaintiff's Exhibit No. 47-n: Final certificate No. 4785, dated July 18, 1904.

Plaintiff's Exhibit No. 47-o: Certified copy of patent dated December 31, 1904, granting to Hattie Rowland the land described in Plaintiff's Exhibit No. 47.

Plaintiff's Exhibits Nos. 48 and 48-a to 48-n, Inclusive, Relate to the Application and Entry of William B. Benton.

Plaintiff's Exhibit No. 48: William B. Benton. Occupation, railroading.

Sworn statement dated and filed August 27, 1902, for the entry of the South half of the Northwest

quarter and the North half of the Southwest quarter of Section 15, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 48-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 48-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 48-c: Notice for publication.

Plaintiff's Exhibit No. 48-d: Proof of publication.

Plaintiff's Exhibit No. 48-e: Testimony of William B. Benton given at final proof, November 21, 1902.

Answer to question No. 12 thereof: \$2,200.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 48-f: Cross-examination of [3488—118] William B. Benton.

Answer to question No. 10 thereof: 2,150,000 feet.
\$2,200.00.

Answer to question No. 12 thereof: I expect to hold it until I can realize its full value.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: I do not know of any market at present.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: By locating and estimating in the Clearwater timber belt. Fees for services since October 1, 1902.

Answer to question No. 18 thereof: Yes. Lewiston National Bank.

Plaintiff's Exhibit No. 48-g: Testimony of witness Walter A. Smith given at final proof.

Plaintiff's Exhibit No. 48-h: Testimony of Joel H. Benton given at final proof, November 21, 1902.
Answer to question No. 3 thereof: August 19 and 20, 1902, walked over it.

Plaintiff's Exhibit No. 48-i: Cross-examination of witness Walter A. Smith at final proof.

Plaintiff's Exhibit No. 48-j: Cross-examination of witness Joel H. Benton.

Plaintiff's Exhibit No. 48-k: Receiver's receipt No. 4054, dated November 21, 1902.

Plaintiff's Exhibit No. 48-l: Final certificate No. 4050, dated November 21, 1902.

Plaintiff's Exhibit No. 48-m: Certified copy of warranty deed made and executed by William B. Benton, January 10, 1903, conveying to C. W. Robnett in fee simple, the land described in Plaintiff's Exhibit No. 48. Consideration [3489—119] mentioned in deed \$1,600.00. Recorded in the office of the Recorder of Shoshone County at the request of the Shoshone Abstract Company, April 27, 1903.

Plaintiff's Exhibit No. 48-n: Certified copy of patent, dated February 25, 1904, granting to William B. Benton the land described in Plaintiff's Exhibit No. 48.

Plaintiff's Exhibits Nos. 49 and 49-a to 49-o, Inclusive, Relate to the Application and Entry of Benjamin F. Bashor.

Plaintiff's Exhibit No. 49: Benjamin F. Bashor. Occupation, farmer.

Sworn statement dated and filed March 21, 1903,

for the entry of Lot 4 and the Southwest quarter of the Southeast quarter and the South half of the Southwest quarter of Section 24, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 49-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 49-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 49-c: Notice for publication, dated March 21, 1903. Persons named as witnesses therein: Edward L. Knight, William B. Benton, John H. Little and Elsworth M. Harrington.

Plaintiff's Exhibit No. 49-d: Proof of publication.

Plaintiff's Exhibit No. 49-e: Testimony of witness Elsworth M. Harrington given at final proof, June 17, 1903.

Answer to question No. 3 thereof: June 8, 1903, by walking over the land.

Plaintiff's Exhibit No. 49-f: Cross-examination of [3490—120] witness Elsworth M. Harrington at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 49-g: Testimony of witness John H. Little given at final proof, June 17, 1903.

Answer to question No. 3 thereof: March 6, 1903, by walking over the land.

Plaintiff's Exhibit No. 49-h: Cross-examination of witness John H. Little.

Answer to question No. 8 thereof: Yes. Yes.

Answer to question No. 3 thereof: I examined the land with Mr. Bashor on Mar. 6, 1903. Lot 4

and the SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. $\frac{1}{2}$, SW. $\frac{1}{4}$, Sec. 24,
Tp. 39 N., R. 3 E.

Plaintiff's Exhibit No. 49-i: Testimony of Benjamin F. Bashor given at final proof, June 17, 1903.

Answer to question No. 5 thereof: March 6, 1903, by walking over the land.

Answer to question No. 12 thereof: \$1,800.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 49-j: Cross-examination of Benjamin F. Bashor at final proof.

Answer to question No. 6 thereof: W. B. Benton located me on this land.

Answer to question No. 7 thereof: Yes. W. B. Benton. \$125.00.

Answer to question No. 8 thereof: Yes, March 6, 1903.

Answer to question No. 10 thereof: 1,800,000 feet.
\$1,800.00.

Answer to question No. 12 thereof: Hold it for a good market.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I made it from my salary as County Assessor. Six months.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 49-k: Receiver's receipt No. [3491—121] 4390, dated June 17, 1903.

Plaintiff's Exhibit No. 49-l: Final certificate No. 4390, dated June 17, 1903.

Plaintiff's Exhibit No. 49-m: Certified copy of patent, dated August 3, 1904, granting to Benjamin F. Bashor the land described in Plaintiff's Exhibit No. 49.

Plaintiff's Exhibit No. 49-n: Certified copy of Receiver's receipt No. 4390, issued to Benjamin F. Bashor, June 17, 1903, for the sum received in payment for the land described in Plaintiff's Exhibit No. 49. Recorded at the request of W. F. Kettenbach, June 20, 1903, in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 49-o: Certified copy of mortgage made and executed by Benjamin F. Bashor and wife, June 17, 1903, conveying to Clarence W. Robnett the land described in Plaintiff's Exhibit No. 49, to secure a promissory note signed by Benjamin F. Bashor, June 17, 1903, in the sum of \$550.00, and payable to the order of C. W. Robnett in one year after date with interest at 1% per month until paid, together with an additional sum of \$60.00 as attorney's fees in the event suit is instituted to collect the said note. Said mortgage was filed for record at the request of W. F. Kettenbach, June 20, 1903, in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibits Nos. 50 and 50-a to 50-p, Inclusive, Relate to the Application and Entry of Pearl Washburn.

Plaintiff's Exhibit No. 50: Pearl Washburn. Occupation, housekeeper. [3492—122]

Sworn statement dated and filed January 19, 1903, for the entry of the East half of the Southeast quar-

ter and the Southeast quarter of the Northeast quarter of Section 27, Tp. 40, North of Range 4 East, Boise Meridian.

Plaintiff's Exhibit No. 50-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 50-b: Proof of publication.

Plaintiff's Exhibit No. 50-c: Notice for publication.

Plaintiff's Exhibit No. 50-d: Non-mineral affidavit.

Plaintiff's Exhibit No. 50-e: Testimony of Pearl Washburn given at final proof, April 16, 1903.

Answer to question No. 12 thereof: \$1,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 50-f: Affidavit of Pearl Washburn, dated April 16, 1903, that she purposes to purchase the land described in Plaintiff's Exhibit No. 50 with her own money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever will inure to the benefit of her husband or any other person, and that she has never made an entry under the timber and stone act, nor derived or had any interest whatever in or to a former entry made by any person or association of persons.

Plaintiff's Exhibit No. 50-g: Cross-examination of Pearl Washburn at final proof.

Answer to question No. 12 thereof: Keep it for my own benefit.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

[3493—123]

Answer to question No. 17 thereof: From my father's estate. Three years.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 50-h: Testimony of witness Charles O. Washburn given at final proof.

Plaintiff's Exhibit No. 50-i: Cross-examination of witness Charles O. Washburn at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 50-j: Testimony of witness Perry Clark given at final proof.

Plaintiff's Exhibit No. 50-k: Cross-examination of witness Perry Clark at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 50-l: Receiver's receipt No. 4306, dated April 16, 1903.

Plaintiff's Exhibit No. 50-m: Final certificate No. 4306, dated April 16, 1903.

Plaintiff's Exhibit No. 50-n: Certified copy of patent dated July 2, 1904, granting to Pearl Washburn the land described in Plaintiff's Exhibit No. 50.

Plaintiff's Exhibit No. 50-o: Certified copy of receiver's receipt No. 4306 issued to Pearl Washburn, April 16, 1903, for the sum received in payment for the land described in Plaintiff's Exhibit No. 50. Recorded at the request of W. F. Kettenbach, April 18, 1903, in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 50-p: Certified copy of

mortgage made and executed by Pearl Washburn and husband, April 16, 1903, conveying to William F. Kettenbach the land described in Plaintiff's Exhibit No. 50, to secure a promissory note made by Pearl Washburn and Charles O. Washburn, dated April 16, 1903, in the sum of [3494—124] \$400.00, payable to the order of W. F. Kettenbach in one year with interest at the rate of 1% per month, and in event suit is instituted to collect said note it provides for the payment of the additional sum of \$50.00 as attorney's fees. The mortgage was recorded at the request of W. F. Kettenbach, April 18, 1903.

Plaintiff's Exhibits Nos. 51 and 51-a to 51-q, Inclusive, Relate to the Application and Entry of James C. Evans.

Plaintiff's Exhibit No. 51: James C. Evans. Occupation, lumberman.

Sworn statement dated and filed March 24, 1903, for the entry of the West half of the Southwest quarter and the South half of the Northwest quarter of Section 25, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 51-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 51-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 51-c: Affidavit of James C. Evans that he could not make proof on June 16, 1903, the day set for that purpose, as he was unable to secure the attendance of his witnesses.

Plaintiff's Exhibit No. 51-d: Proof of publication.

Plaintiff's Exhibit No. 51-e: Notice for publica-

tion, dated March 24, 1903. Persons named as witnesses therein: Charley Smith, Joseph B. Klute, Fred Emery and Lon E. Bishop.

Plaintiff's Exhibit No. 51-f: Testimony of James C. Evans given at final proof, June 17, 1903.

Answer to question No. 5 thereof: March 20 and June 7, 1903, by walking over the land.

Answer to question No. 12 thereof: \$1,200.00. [3495—125]

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 51-g: Cross-examination of James C. Evans at final proof, June 17, 1903.

Answer to question No. 7 thereof: No.

Answer to question No. 10 thereof: 2,000,000 feet. \$1,200.00.

Answer to question No. 11 thereof: Yes.

Answer to question No. 12 thereof: I expect to hold it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned some of it by lumbering and borrowed the balance and gave no security on this land.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 51-h: Testimony of witness Lon E. Bishop given at final proof, June 17, 1903.

Plaintiff's Exhibit No. 51-i: Cross-examination of witness Lon E. Bishop at final proof.

Answer to question No. 5 thereof: Small and Emery.

Answer to question No. 8 thereof: Yes. I think he has.

Plaintiff's Exhibit No. 51-j: Testimony of witness Joseph B. Clute given at final proof, June 17, 1903.

Plaintiff's Exhibit No. 51-k: Cross-examination of witness Joseph B. Clute at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 51-l: Affidavit of Joseph B. Clute that his name is spelled Clute and not Klute.

Plaintiff's Exhibit No. 51-m: Receiver's receipt No. 4391, dated June 17, 1903.

Plaintiff's Exhibit No. 51-n: Final certificate No. 4391, dated June 17, 1903. [3496—126]

Plaintiff's Exhibit No. 51-o: Certified copy of patent dated August 3, 1904, granting to James C. Evans the land described in Plaintiff's Exhibit No. 51.

Plaintiff's Exhibit No. 51-p: Certified copy of receiver's receipt issued to James C. Evans No. 4391, dated June 17, 1903, for the sum received in payment for the land described in Plaintiff's Exhibit No. 51. Recorded at the request of George H. Kester, August 10, 1903, in the office of the recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 51-q: Certified copy of warranty deed made and executed by James C. Evans, June 17, 1903, granting to William F. Kettenbach and George H. Kester, in fee simple, the land described in Plaintiff's Exhibit No. 51. The consideration mentioned therein is \$1,000.00. Recorded

at the request of George H. Kester in the office of the Recorder of Shoshone County, August 10, 1903.

Plaintiff's Exhibits Nos. 52 and 52-a to 52-o, Inclusive, Relate to the Application and Entry of George Morrison.

Plaintiff's Exhibit No. 52: George Morrison. Occupation, carpenter.

Sworn statement dated and filed March 30, 1903, for the entry of the Northeast quarter of Section 22, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 52-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 52-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 52-c: Proof of publication.

Plaintiff's Exhibit No. 52-d: Notice for publication, dated March 30, 1903. [3497—127]

Persons named as witnesses therein: Edward L. Knight, W. B. Benton, Wren Pierce and Edward M. Hyde.

Plaintiff's Exhibit No. 52-e: Testimony of witness Wren Pierce given at final proof, June 26, 1903.

Plaintiff's Exhibit No. 52-f: Cross-examination of witness Wren Pierce at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 52-g: Testimony of witness Edward M. Hyde given at final proof, June 26, 1903.

Plaintiff's Exhibit No. 52-h: Cross-examination of witness Edward M. Hyde at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 52-i: Testimony of George Morrison given at final proof, June 26, 1903.

Answer to question No. 12 thereof: \$3,000.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 52-j: Cross-examination of George Morrison at final proof, June 26, 1903.

Answer to question No. 6 thereof: W. B. Benton told me about it.

Answer to question No. 7 thereof: Yes. W. B. Benton. \$100.00.

Answer to question No. 8 thereof: Yes. With W. B. Benton on March 15, 1903.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned it at my trade. Two years.

Answer to question No. 18 thereof: No. [3498—128]

Plaintiff's Exhibit No. 52-k: Receiver's receipt No. 4411, dated June 26, 1903.

Plaintiff's Exhibit No. 52-l: Final certificate No. 4411 dated June 26, 1903.

Plaintiff's Exhibit No. 52-m: Certified copy of patent dated August 3, 1904, granting to George Morrison the land described in Plaintiff's Exhibit No. 52.

Plaintiff's Exhibit No. 52-n: Certified copy of receiver's receipt No. 4411 issued to George Morrison, June 26, 1903, for the sum paid for the land described in Plaintiff's Exhibit No. 52. Recorded at the request of George H. Kester, August 10, 1903,

in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 52-o: Certified copy of warranty deed made and executed by George Morrison and wife, June 26, 1903, granting to William F. Kettenbach and George H. Kester in fee simple, the land described in Plaintiff's Exhibit No. 52. Consideration mentioned therein \$1.00. Recorded at the request of George H. Kester in the office of the Recorder of Shoshone County, August 10, 1903.

Plaintiff's Exhibits Nos. 53 and 53-a to 53-o, Inclusive, Relate to the Application and Entry of Edward M. Hyde.

Plaintiff's Exhibit No. 53: Edward H. Hyde. Occupation, teamster.

Sworn statement dated and filed, March 30, 1903, for the entry of the Northwest quarter of Section 22, Tp. 39, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 53-a: Duplicate of sworn statement. [3499—129]

Plaintiff's Exhibit No. 53-b: Notice for publication, dated March 30, 1903. Persons named therein as witnesses: Edward L. Knight, William B. Benton, Wren Pierce and George Morrison.

Plaintiff's Exhibit No. 53-c: Proof of publication.

Plaintiff's Exhibit No. 53-d: Non-mineral affidavit.

Plaintiff's Exhibit No. 53-e: Testimony of witness Wren Pierce given at final proof, June 26, 1903.

Plaintiff's Exhibit No. 53-f: Cross-examination

of witness George Morrison given at final proof, June 26, 1903.

Answer to question No. 8 thereof: I think he has. I think so.

Plaintiff's Exhibit No. 53-g: Testimony of witness George Morrison given at final proof.

Plaintiff's Exhibit No. 53-h: Testimony of witness Wren Pierce given at final proof.

Answer to question No. 8 thereof: Yes, sir.

Plaintiff's Exhibit No. 53-i: Testimony of Edward M. Hyde given at final proof, June 26, 1903.

Answer to question No. 12 thereof: 1,500,000 feet.

Answer to question No. 13 thereof: No, sir, I have not.

Answer to question No. 14 thereof: Yes, sir.

Answer to question No. 15 thereof: No, sir.

Plaintiff's Exhibit No. 53-j: Cross-examination of Edward M. Hyde at final proof, June 26, 1903.

Answer to question No. 6 thereof: No one. I went out and hunted it up.

Answer to question No. 7 thereof: No, sir.

Answer to question No. 8 thereof: Yes, sir.

Answer to question No. 10 thereof: 1,500,000. Has no present value.

Answer to question No. 12 thereof: I expect to hold the [3500—130] same and use it when there is a market.

Answer to question No. 13 thereof: No, do not.

Answer to question No. 14 thereof: No, sir.

Answer to question No. 15 thereof: No present market.

Answer to question No. 16 thereof: I certainly did.

Answer to question No. 17 thereof: I have worked and mined for this and other money for several years. Several months.

Answer to question No. 18 thereof: No. Never kept a bank account.

Plaintiff's Exhibit No. 53-k: Receiver's receipt No. 4412, dated June 26, 1903.

Plaintiff's Exhibit No. 53-l: Final certificate No. 4412, dated June 26, 1903.

Plaintiff's Exhibit No. 53-m: Certified copy of patent dated August 3, 1904, granting to Edward M. Hyde the land described in Plaintiff's Exhibit No. 53.

Plaintiff's Exhibit No. 53-n: Certified copy of receiver's receipt No. 4412, issued to Edward M. Hyde, June 26, 1903, for the sum received in payment for the land described in Plaintiff's Exhibit No. 53. Recorded at the request of George H. Kester, August 10, 1903.

Plaintiff's Exhibit No. 53-o: Certified copy of warranty deed made and executed by Edward M. Hyde and wife, June 26, 1903, granting to William F. Kettenbach and George H. Kester in fee simple, the land described in Plaintiff's Exhibit No. 53. Consideration mentioned therein \$1.00. Recorded at the request of George H. Kester in the office of the County Recorder of Shoshone County, August 10, 1903. [3501—131]

Plaintiff's Exhibits Nos. 54 and 54-a to 54-p, Inclusive, Relate to the Application and Entry of Robert O. Waldman.

Plaintiff's Exhibit No. 54: Robert O. Waldman.

Occupation, storekeeper.

Sworn statement dated and filed, March 6, 1903, for the entry of Lots 2, 3, 6 and 7 of Section 30, Tp. 38, North of Range 2 East, Boise Meridian.

Plaintiff's Exhibit No. 54-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 54-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 54-c: Notice for publication, dated March 6, 1903. Persons mentioned therein as witnesses: William B. Benton, Edward L. Knight, Clarence W. Robnett and Fred Emery.

Plaintiff's Exhibit No. 54-d: Notice for publication.

Plaintiff's Exhibit No. 54-e: Testimony of witness William B. Benton given at final proof, May 25, 1903.

Answer to question No. 3 thereof: Walked over it May 10, 1903.

Plaintiff's Exhibit No. 54-f: Cross-examination of William Benton at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 54-g: Testimony of witness Edward L. Knight given at final proof, May 25, 1903.

Answer to question No. 3 thereof: May 15, 1903. walked over the land.

Plaintiff's Exhibit No. 54-h: Cross-examination of witness Edward L. Knight at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 54-i: Testimony of Robert O. Waldman given at final proof. May 25, 1903.

Answer to question No. 5 thereof: March 2, 1903, by walking over the land.

Answer to question No. 12 thereof: \$1500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 54-j: Cross-examination of Robert O. Waldman given at final proof. May 25, 1903.

Answer to question No. 6 thereof: Edward L. Knight showed the land to me.

Answer to question No. 7 thereof: No.

Answer to question No. 8 thereof: Yes. March 2, 1903.

Answer to question No. 10 thereof: 1,500,000 feet. \$1500.00.

Answer to question No. 12 thereof: Hold it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned it by clerking. Three years.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibits Nos. 54-k and 54-l: Certificate of naturalization of Robert O. Waldman and affidavit relating thereto.

Plaintiff's Exhibit No. 54-m: Receiver's receipt No. 4365, dated May 25, 1903.

Plaintiff's Exhibit No. 54-n; Final certificate No. 4365, dated May 25, 1903.

Plaintiff's Exhibit No. 54-o; Certified copy of patent, dated August 3, 1904, granting to Robert O.

Waldman the land described in Plaintiff's Exhibit No. 54.

Plaintiff's Exhibit No. 54—p: Certified copy of [3503—133] warranty deed made and executed by Robert O. Waldman and wife, May 26, 1903, conveying to Clarence W. Robnett in fee simple, the land described in Plaintiff's Exhibit No. 54. Consideration mentioned therein \$1500.00. Recorded at the request of the Shoshone Abstract Company, October 2, 1903, in the office of the Recorder of Shoshone County, Idaho.

Plaintiff's Exhibit No. 55.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, July 10, 1906, payable to the order of Jannie M. Myers, for \$10.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, July 13, 1906.

Endorsed: Jannie M. Myers.

Pay to the order of First National Bank, Lewiston, Idaho.

J. R. O'NEILL.

Plaintiff's Exhibit No. 56.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, January 23, 1906, payable to the order of Charles S. Myers, for \$75.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, January 23, 1906.

Endorsed: Charles S. Myers.

Plaintiff's Exhibit No. 57.

Check on regular form [3504—134] of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, March 20, 1906, payable to the order of Charles S. Myers, for \$40.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, April 19, 1906.

Endorsed: Charles S. Myers.

Plaintiff's Exhibit No. 58.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, March 20, 1906, payable to the order of Charles S. Myers, for \$45.45, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, April 19, 1906.

Endorsed: Charles S. Myers.

Plaintiff's Exhibit No. 59.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, December 4, 1906, payable to the order of E. A. Jolly, for \$50.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, December 18, 1906.

Endorsed: E. A. Jolly. J. L. Coontz.

Plaintiff's Exhibit No. 60.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, February 28, 1907, payable to [3505—135] the order of E. A. Jolly, for \$25.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National

Bank, March 12, 1907.

Endorsed: E. A. Jolly. W. J. Todd.

Pay to Lewiston National Bank of Lewiston, Idaho, or order.

IDAHO MERCANTILE CO.,
A. J. CAMPBELL.

Plaintiff's Exhibit No. 61.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, December 4, 1906, payable to the order of Mary A. Loney, for \$50.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, December 18, 1906.

Endorsed: Mary A. Loney. J. L. Coontz.

Plaintiff's Exhibit No. 62.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, February 28, 1907, payable to the order of Mary A. Loney, for \$25.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank March 27, 1907.

Endorsed: Mary A. Loney. W. J. Todd. F. Roos, Jr. [3506—136]

Plaintiff's Exhibit No. 63.

State of Idaho,
County of Nez Perce,—ss.

....., being duly sworn, deposes and says: That he is the identical party who made entry of the lands hereinafter described under the Stone and Timber Act providing for such entry. That at no time prior to the entry or prior to the final proof did the af-

fiant have any agreement or understanding, express or implied, that said entry was being made or said title being acquired for the benefit or advantage directly or indirectly, of any person, company or corporation. That said entry was made and said title acquired solely for the exclusive use and benefit of the affiant. That prior to the entry affiant had made personal examination of said land and here makes oath that to the best of his belief the same did not and does not contain any valuable deposit of gold, silver, cinnabar, copper or coal and was not mineral land under the terms of said Act. That the same now being negotiated is not the result nor made in pursuance of any agreement or understanding, express or implied, had at any time prior to final proof upon the hereinbelow described lands and that the said purchaser in no wise nor in anyway had any interest in or to said lands or the title thereto directly or indirectly prior to the negotiations for the present sale and that such negotiations were commenced subsequent to the final proof and the acquisition of title by this affiant from the government. That the lands referred to are described as follows: to wit:

.....

[3507—137]

.....

Subscribed and sworn to before me this day
 of, A. D. 190.....

.....

Plaintiff's Exhibit No. 64.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, April 4, 1906, payable to the order of W. J. Todd, for \$16.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, April 10, 1906.

Endorsed: W. J. Todd. John Gaffney.

Plaintiff's Exhibit No. 65.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, April 20, 1906, payable to the order of W. J. Todd, for \$8.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, April 24, 1906.

Endorsed: W. J. Todd. John Gaffney.

Plaintiff's Exhibit No. 66.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check, dated Lewiston, Idaho, March 23, 1906, payable to the [3508—138] order of W. J. Todd, for \$16.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, March 31, 1906.

Endorsed: W. J. Todd.

Pay to the order of Lewiston National Bank, Lewiston, Idaho.

SAMSON SNYDER, Jr.

Plaintiff's Exhibit No. 67.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, March 19, 1906, payable to the order of W. J. Todd,

for \$16.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, March 28, 1906.

Endorsed: W. J. Todd.

Plaintiff's Exhibit No. 68.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, December 21, 1906, payable to the order of W. J. Todd, for \$20.00 signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank January 14, 1907.

Endorsed: W. J. Todd.

Plaintiff's Exhibit No. 69.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, March 10, 1907, payable to the [3509—139] order of W. J. Todd, for \$20.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, March 18, 1907.

Endorsed: W. J. Todd.

Pay First National Bank Lewiston, Idaho, or order.

ERB BROS.

Stamped on back of check, "Paid March 18, 1907," with stamp of First National Bank, Lewiston, Idaho.

Plaintiff's Exhibit No. 69-a.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, March 23, 1906, payable to the order of myself \$356.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, March 23, 1906.

Plaintiff's Exhibit No. 70.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, March 23, 1906, payable to the order of Lewiston National Bank, for \$508.47, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, March 23, 1906.

Plaintiff's Exhibit No. 70-a.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, June 12, 1906, payable to the order of myself, for \$900.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, June 12, 1906.

Plaintiff's Exhibit No. 70-b.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check [3510—140] dated Lewiston, Idaho, June 19, 1906, payable to the order of myself, for \$900.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, June 19, 1906.

Plaintiff's Exhibit No. 70-c.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho, January 7, 1907, payable to the order of H. J. Steffey, for \$50.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, January 7, 1907.

Plaintiff's Exhibit No. 71.

Check on regular form of Lewiston National Bank of Lewiston, Idaho, check dated Lewiston, Idaho,

April 3, 1907, payable to the order of myself, for \$450.00, signed H. J. Steffey.

Stamped paid with stamp of Lewiston National Bank, April 3, 1907.

Plaintiff's Exhibit No. 72.

An agreement dated July 23, 1907, between William F. Kettenbach and George H. Kester and the Idaho Trust Company, and is copied in full on pages 1385 to 1391 inclusive in the transcript of the testimony.

Plaintiff's Exhibit No. 73.

Agreement dated December 31, 1908, between William Dwyer and Kittie E. Dwyer, his wife, of the first part and the Idaho Trust Company of the second part, and is copied in full on pages 1393 to 1399 inclusive of the transcript of the testimony.
[3511—141]

Plaintiff's Exhibit No. 74.

“\$728.75 Lewiston, Idaho, June 26, 1903.

One year after date, without grace, for value received, I promise to pay to the order of Clarence W. Robnett at THE LEWISTON NATIONAL BANK at Lewiston, Idaho, Seven hundred twenty eight and 75/100 Dollars, in United States Gold Coin, with interest after date in like Gold Coin, at the rate of one per cent per month until paid. And if suit be instituted to collect this note, or any part thereof, I promise to pay the additional sum of Seventy five

Dollars as attorney's fees in said suit.

P. O. Lewiston, Idaho.

No. Due

GEORGE RAY ROBISON.

. ”

Endorsed: “Pay to W. F. Kettenbach without re-
course.

CLARENCE W. ROBNETT.” [3512—142]

Plaintiff's Exhibit No. 75.

PLEASE EXAMINE AND REPORT WITHOUT
DELAY.

LEWISTON, IDAHO,, 191

Stock Ownership

Idaho Trust Company.

	Before Jan. 7-08.	On Jan. 7-08.
Frank W. Kettenbach	483	396½
Sarah J. Simpson	293	146½
Edward C. Smith	220	110
A. Freidenrich	120	75
Geo. A. Smith	133	66½
William F. Kettenbach	130	235
Elizabeth White	60	75
Grace K. Pfafflin	65	322½
O. A. Kjos	160	80
W. W. Brown	20	10
C. Weisgerber	26	23
S. Salsberg	30	15
M. Glatigny	40	20
Frank McGrane	50	25
S. G. Isaman	30	15
Amy D. Kettenbach	8	4

	Before Jan. 7-08.	On Jan. 7-08.
E. L. Alford	15	71½
Jas. E. Babb	10	5
Marie Kettenbach	1	
Alfred D. Kettenbach	1	
Matthew Scully	10	5
Wm. A. Libert	50	75
Mrs. Henrietta Freedman	20	10
M. Donzac	10	5
Elizabeth Kettenbach	15	71½
R. C. Beach		5
C. C. Bunnell		35
[3513—143]		
Robert Schleicher		40
Ira Small		20
John B. Hess		5
Harriet F. Morris		15
James Lambert		40
J. Alexander		90
Amy D. Kettenbach, Trustee		1
Jo. Richards		2
J. P. M. Richards		3
Dora B. Smith		10

2000 Shares 2000 Shares

[3514—144]

Plaintiff's Exhibits Nos. 76 and 76-a to 76-o, Inclusive, Relate to the Application and Entry of Carrie D. Maris.

Plaintiff's Exhibit No. 76: Carrie D. Maris. Occupation, Clerk.

Sworn statement dated and filed July 15, 1902, for

the entry of the Southeast quarter of the Southwest quarter of Section 12 and the East half of the Northwest quarter and the Northeast quarter of the Southwest quarter of Section 13, Tp. 36, North of Range 5 East, Boise Meridian.

Plaintiff's Exhibit No. 76-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 76-b: Non-mineral affidavit.

Plaintiff's Exhibit No. 76-c: Notice for publication.

Plaintiff's Exhibit No. 76-d: Proof of publication.

Plaintiff's Exhibit No. 76-e: Testimony of Carrie D. Maris given at final proof, November 21, 1902.

Answer to question No. 5 thereof: July 13, 1902, by walking over the land.

Answer to question No. 12 thereof: \$1500.00.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: Yes.

Answer to No. 15 thereof: No.

Plaintiff's Exhibit No. 76-f: Cross-examination of Carrie D. Maris at final proof, November 21, 1902.

Answer to question No. 5 thereof: Clerking. P. H.

Waldman and J. P. Vollmer. \$35.00 per month.

Answer to question No. 6 thereof: J. C. Jansen told me about it.

Answer to question No. 7 thereof: Yes. J. C. Jansen.
\$100.00. [3515—145]

Answer to question No. 10 thereof: 2,000,000 feet.
\$1500.00.

Answer to question No. 12 thereof: Keep it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes. Yes.

Answer to question No. 17 thereof: I earned it clerking in stores. Three months.

Answer to question No. 18 thereof: Not all the time.

Plaintiff's Exhibit No. 76-g: Testimony of witness Charles Jansen given at final proof.

Plaintiff's Exhibit No. 76-h: Cross-examination of Charles Jansen at final proof.

Answer to question No. 8 thereof: Yes. Yes.

Plaintiff's Exhibit No. 76-i: Testimony of witness Clarence P. Smith given at final proof.

Plaintiff's Exhibit No. 76-j: Cross-examination of witness Clarence P. Smith at final proof.

Plaintiff's Exhibit No. 76-k: Affidavit of Carrie D. Maris that she could not make final proof on the day set, because she could not secure the presence of her witnesses.

Plaintiff's Exhibit No. 76-l: Receiver's receipt No. 4049, dated November 21, 1902.

Plaintiff's Exhibit No. 76-m: Final certificate No. 4049, dated November 21, 1902.

Plaintiff's Exhibit No. 76-n: Certified copy of patent, dated February 25, 1904, granting to Carrie D. Maris the land described in Plaintiff's Exhibit No. 76.

Plaintiff's Exhibit No. 76-o: Certified copy of warranty deed made and executed by Carrie D. Maris, June 2, 1903, [3516—146] conveying to Clarence W. Robnett in fee simple the land described in Plaintiff's Exhibit No. 76. Consideration mentioned

therein \$1500.00. Recorded in the office of the Recorder of Shoshone County at the request of the Shoshone Abstract Company, June 27, 1903.

Plaintiff's Exhibits Nos. 77 and 77-a to 77-o, Inclusive, Relate to the Application and Entry of Drury M. Gammon.

Plaintiff's Exhibit No. 77: Drury M. Gammon: Occupation, workingman.

Sworn statement dated and filed, May 12, 1903, for the entry of the Southeast quarter of the Southeast quarter of Section 26 and the Southwest quarter of the Southwest quarter of Section 25 and the North half of the Northeast quarter of Section 35, all in Tp. 40, North of Range 3 East, Boise Meridian.

Plaintiff's Exhibit No. 77-a: Duplicate of sworn statement.

Plaintiff's Exhibit No. 77-b: Nonmineral affidavit.

Plaintiff's Exhibit No. 77-c: Notice for publication, dated May 12, 1903. Persons named as witnesses therein: Edward L. Knight, William B. Benton, Joel H. Benton and Charles O. Washburn.

Plaintiff's Exhibit No. 77-d: Proof of publication.

Plaintiff's Exhibit No. 77-e: Affidavit of Drury M. Gammon, dated August 11, 1903, that he is unable to make proof on the day set because he could not secure the attendance of his witnesses with the exception of Charles O. Washburn.

Plaintiff's Exhibit No. 77-f: Testimony of Drury M. Gammon given at final proof, August 19, 1903.
[3517—147]

Answer to question No. 5 thereof: I inspected the

land on the 9th and 10th of May, 1903. Had not been on the land before. I walked over the land at that time.

Answer to question No. 12 thereof: I should say about \$1,000.00.

Answer to question No. 13 thereof: I have not.

Answer to question No. 14 thereof: Yes.

Answer to question No. 15 thereof: No.

Plaintiff's Exhibit No. 77-g. Cross-examination of Drury M. Gammon at final proof, August 19, 1903.

Answer to question No. 5 thereof: Waiting table and night clerk, Raymond Hotel. W. H. Davis. \$45.00 per month.

Answer to question No. 6 thereof: Mr. Clark who locates people on timber land.

Answer to question No. 7 thereof: Yes to Mr. Clark, \$80.00.

Answer to question No. 8 thereof: Yes, about May 9, 1903, with Mr. Clark, when he went to show me the land.

Answer to question No. 10 thereof: One and one-half million feet. About \$1,000.00.

Answer to question No. 12 thereof: Hold it and sell it when I can get a good price for it.

Answer to question No. 13 thereof: No.

Answer to question No. 14 thereof: No.

Answer to question No. 15 thereof: Lewiston, Idaho.

Answer to question No. 16 thereof: Yes.

Answer to question No. 17 thereof: Money that I had saved up for the past six months.

Answer to question No. 18 thereof: No.

Plaintiff's Exhibit No. 77-h: Testimony of witness

Charles O. Washburn given at final proof.

Plaintiff's Exhibit No. 77-i: Cross-examination of witness Charles O. Washburn at final proof.

Plaintiff's Exhibit No. 77-j: Testimony of witness [3518—148] Edward L. Knight at final proof.

Plaintiff's Exhibit No. 77-k: Cross-examination of witness Edward L. Knight at final proof.

Plaintiff's Exhibit No. 77-l: Receiver's receipt No. 4477, dated August 19, 1903.

Plaintiff's Exhibit No. 77-m: Final certificate No. 4477, dated August 19, 1903.

Plaintiff's Exhibit No. 77-n: Certified copy of patent dated September 9, 1904, granting to Drury M. Gammon the land described in Plaintiff's Exhibit No. 77.

Plaintiff's Exhibit No. 77-o: Certified copy of warranty deed made and executed by Drury M. Gammon, October 9, 1903, granting to Clarence W. Robnett in fee simple, the land described in Plaintiff's Exhibit No. 77. Consideration mentioned in deed \$1.00. Recorded at the request of the Lewiston National Bank in the office of the Recorder of Shoshone County, Idaho, November 16, 1904.

Plaintiff's Exhibit No. 78.

Copied in full in the transcript of the testimony at pages 1557 and 1558.

Plaintiff's Exhibit No. 79.

Copied in full in the transcript of the testimony at pages 1561 and 1562. [3519—149] *az*